

EXHIBIT E  
Transcript of Deposition of Michael Jenkins November 18, 2022

This Exhibit was Voluminous and was Filed of Record in Concert with this Motion

IN THE COURT OF COMMON PLEAS  
OF SOMERSET COUNTY, PA  
CIVIL DIVISION

\* \* \* \* \*

HARRY C. NEEL, MICHAEL \*  
JENKINS, and LEE \* Case No.  
CAVANAUGH, Individually \* 275 CIVIL  
and Derivatively on \* 2019  
Behalf of THE \*  
STONYCREEK VALLEY \*  
DEVELOPMENT CORPORATION, \*  
Plaintiffs \*  
vs. \*  
DANIEL DIVELY, and THE \*  
STONYCREEK VALLEY \*  
DEVELOPMENT CORPORATION, \*  
Defendants \*

\* \* \* \* \*

DEPOSITION OF  
MICHAEL JENKINS  
November 18, 2022

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DEPOSITION

OF

MICHAEL JENKINS, taken on behalf of  
the Defendants herein, pursuant to the  
Rules of Civil Procedure, taken before  
me, the undersigned, Michael G.  
Sargent, a Court Reporter and Notary  
Public in and for the Commonwealth of  
Pennsylvania, at the Somerset County  
Courthouse, 111 East Union Street,  
Somerset, Pennsylvania, on Friday,  
November 18, 2022, beginning at 9:03  
a.m.

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DEVELOPMENT CORPORATION

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WITNESS: MICHAEL JENKINS

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S T I P U L A T I O N

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(It is hereby stipulated and agreed by  
and between counsel for the respective  
parties that reading, signing,  
sealing, certification and filing are  
not waived.)  
-----

P R O C E E D I N G S

-----  
MICHAEL JENKINS,  
CALLED AS A WITNESS IN THE FOLLOWING  
PROCEEDING, AND HAVING FIRST BEEN DULY  
SWORN, TESTIFIED AND SAID AS FOLLOWS:

---  
EXAMINATION  
---

BY ATTORNEY CASCIO:

Q. Could you please state your  
full name for the record?

A. Michael William Jenkins.

Q. And are you aware that you are  
being deposed in the case which you  
and your co-complainants have filed  
against the Stonycreek Valley



1 Development Corporation?

2 A. Yes.

3 Q. And have you ever been deposed  
4 before?

5 A. No.

6 Q. I'm going to be asking you  
7 questions, and you're going to be  
8 answering them under oath, which you  
9 just took.

10 You understand that?

11 A. Yes.

12 Q. The court reporter is here to  
13 transcribe everything that is said.  
14 Sometimes we interrupt each other or  
15 talk over, so my --- I'll try not to  
16 do that to you, if you try not to do  
17 that --- if you, please, try to do  
18 that to me. The court reporter can't  
19 show on the record anything other than  
20 what you say, so nodding your head or  
21 making a --- trying to communicate in  
22 any other way, it won't --- it won't  
23 be acceptable.

24 And you understand that you're  
25 going to be testifying today under

1 oath, and there are penalties for  
2 giving false information under oath.

3 A. Yes.

4 Q. You understand that.

5 Do you have any reason where  
6 you couldn't for some physical or  
7 other situation, you could not give  
8 truthful answers to my questions  
9 today?

10 A. No.

11 Q. If you don't understand a  
12 question or a term in a question I  
13 ask, feel free to ask me to explain  
14 it. I'm going to assume if you don't  
15 ask for an explanation or  
16 clarification that you understood the  
17 question the way it was asked.

18 Do you understand?

19 A. Yes.

20 Q. If you need any clarification,  
21 just ask me to clarify any questions  
22 that I ask you.

23 Do you understand that?

24 A. Yes.

25 Q. If you have not certain or

1 complete knowledge of a matter that I  
2 ask you a question about, you can tell  
3 me what you know and indicate where  
4 the limitation of your knowledge or  
5 information is.

6 Do you understand that?

7 A. Yes.

8 Q. If I ask you a question that  
9 you're unsure of or if I refer to some  
10 kind of a document, you can ask me to  
11 reference whatever I am referring to.

12 I'll give you a copy to look at.

13 Do you understand that?

14 A. Yes.

15 Q. Let me go through my checklist  
16 here.

17 And I expect that your answers  
18 will be complete answers or if there's  
19 anything that you wish to add or  
20 supplement to an answer that wasn't  
21 exactly in the nature of my question,  
22 just indicate that you're doing that.

23 I will not object.

24 Do you understand that?

25 A. Yes.

1 Q. All right.

2 Then Mr. Leake will be asking  
3 you questions following my  
4 examination.

5 Do you understand that?

6 A. Yes.

7 Q. State your full name please.

8 A. Michael William Jenkins.

9 Q. And when and where were you  
10 born?

11 A. Johnstown, Pennsylvania.  
12 February 15th, 1983.

13 Q. Were you raised in Johnstown?  
14 Is that --- is that where you've lived  
15 your whole life?

16 A. Born is Johnstown, raised in  
17 Richmond Township.

18 Q. And when --- what is your  
19 education? What's your education?

20 A. High school diploma and then  
21 technical school for fiber optic  
22 communication.

23 Q. Could you describe the type of  
24 education you received in public  
25 school? What was --- did you have a

1 particular track? Were you pre-  
2 college or what was your educational  
3 track?

4 A. Just get through school.

5 Q. General --- general education?

6 A. Mm-hmm (yes).

7 Q. You --- Were your parents from  
8 Johnstown originally or?

9 A. Yes.

10 Q. Okay.

11 And what part of Johnstown were  
12 they --- did they reside? What was  
13 your address growing up in Johnstown?

14 A. I grew up on Parker Road, don't  
15 know the address. Moved to 116A  
16 Hostetler Road when I was about 11.  
17 And then, from there, I moved out at  
18 17, 18 years old to an apartment with  
19 my buddies in the Dale area of  
20 Johnstown.

21 Q. If I repeat myself, I  
22 apologize.

23 Do you have any education after  
24 high school education? Do you have  
25 any degrees or ---

1 A. I answered that it was  
2 technical school, fiber optics.

3 Q. Okay.

4 And what was the nature of that  
5 training?

6 A. Fiber optics.

7 Q. Do you describe ---

8 A. Splicing fiber optic  
9 telecommunications, data cabling,  
10 CCTV.

11 Q. And was your --- were you  
12 employed after your education? How  
13 were you employed after continuing  
14 your education?

15 A. I took a job with TBG America  
16 Canada, and I worked in the Forbes and  
17 Stevenson building for one year in  
18 downtown Pittsburgh operating the ADT  
19 in Pittsburgh for them. And then that  
20 was for about one year.

21 Q. What is ADT again?

22 A. It's ADT, security and home  
23 systems.

24 Q. Okay.

25 So, it's the name of the

1 company?

2 A. Yes, ADT. Yeah, ADT.

3 Q. And how long did you work for  
4 ADT?

5 A. One year.

6 Q. Following that, what was your  
7 employment history? Bring me up to  
8 date. So, bring me to today.

9 A. After the one year of ADT, I  
10 took a job selling cars for Cover  
11 Chevrolet. From Cover Chevrolet, I  
12 left to work for Davis Distribution  
13 Systems, out of Poca, West Virginia.  
14 We had a location in Poca, West  
15 Virginia. We had a distributor. We  
16 had a move then to Newell, West  
17 Virginia, on Route 2. And I was the  
18 territory manager for PA, West  
19 Virginia, Ohio, and the state of  
20 Indiana.

21 Q. And what does --- excuse me.  
22 Where were you residing during these  
23 periods of time? Did you move ---

24 A. Johnstown, Pennsylvania.

25 Q. You always stayed in Johnstown

1 and commuted to those workplaces?

2 A. Yes, sir.

3 Q. What other members are there of  
4 your immediate family, from growing  
5 up? Do you have any brothers and  
6 sisters?

7 A. No.

8 Q. And are your parents still  
9 living in Johnstown?

10 A. No.

11 Q. Okay.

12 Are they still living?

13 A. Yes.

14 Q. In addition to what --- who  
15 provided the education and training  
16 for the work that you were doing for  
17 ADT? Did you get any specific  
18 training or education?

19 A. Wrightco Technologies.

20 Q. Okay.

21 And who is that? Describe who  
22 they are.

23 A. That was a technical school  
24 based in Evansburg, Pennsylvania.

25 Q. And you attended a course of



1 study there before or after you were  
2 employed?

3 A. Before I was employed.

4 Q. Did you receive some sort of  
5 certification or degree?

6 A. Yes.

7 Q. And what was the nature of  
8 that. What was the name of that  
9 certification or degree?

10 A. That I was certified fiber  
11 optics splicer, CCTV, data cabling  
12 technician.

13 Q. All right.

14 Go ahead and proceed with your  
15 education or your work history  
16 following that assignment you referred  
17 to.

18 A. I'm sorry, I didn't hear. The  
19 chair was moving.

20 Q. If you could proceed and  
21 describe your work history and your  
22 employment history and how you've made  
23 a living since that degree.

24 A. Sure. Sure.

25 So, I believe I left off with

1 Davis Distribution Systems. I was a  
2 territorial manager for them. I've  
3 already discussed and told you the  
4 states that I did that.

5 After I was with Davis  
6 Distribution, still at the time of  
7 being employed by Davis Distribution,  
8 I had the opportunity to buy a company  
9 called Audio Force. After purchasing  
10 the company Audio Force with a  
11 partner, I continued to be employed by  
12 Davis Distribution. After Davis  
13 Distribution, I ended up coming back  
14 and taking control of the company. I  
15 was young at that time and with myself  
16 and my partner, we actually made some  
17 of the wrong business decisions being  
18 young and dumb. And my partner  
19 decided that he was going to leave and  
20 go take employment elsewhere.

21 I decided to continue and start  
22 over, and started the company back  
23 over named as Team Force. And then I  
24 built Team Force from what it was to a  
25 company that was doing mobile

1 electronics, was doing installations  
2 for multiple dealerships. We were  
3 doing custom fabrication, seat work,  
4 stereos, remote starts, window  
5 tinting, detailing. Anything we could  
6 do to be young and make money.

7 And through that journey, I  
8 left Davis Distribution at that time  
9 when I did restart that. And I  
10 continued that business up until I  
11 sold that business, recently here in,  
12 last --- this May of '22. And ---

13 Q. That business --- excuse me,  
14 was Team Force?

15 A. Correct.

16 Q. All right.

17 Didn't mean to interrupt you.

18 A. And I also had another  
19 business, started 12 to 13 years ago.

20 Was called Pennsylvania Public  
21 Safety. We were a master Whelen  
22 distributor, Pro Guard and Havis.  
23 Those are all law enforcement  
24 equipment manufacturers. We were the  
25 biggest distributor in Pennsylvania.

1 I sold that company in May as  
2 well. I ran that for 12 to 13 years  
3 also. That one was with a partner. I  
4 was 50/50 in LLC. In Team Force, I  
5 was 100 percent in a corporation with  
6 one shareholder.

7 Q. Just to put a timeline on this,  
8 I made a note you referring to May of  
9 2022.

10 A. Mm-hmm (yes).

11 Q. What was --- is that --- I  
12 didn't --- I'm not recalling what you  
13 said as far in the time scale what  
14 occurred in May of 2022?

15 A. I sold an incorporation and an  
16 LLC.

17 Q. And since May of 2022, have ---  
18 what has your --- have you been  
19 employed or operating a business or  
20 anything like that?

21 A. Yes, I'm employed by the East  
22 Coast Emergency Lighting. We're the  
23 largest Whelan distributor in the  
24 nation.

25 Q. What was that again?

1 A. We are the largest Whelen  
2 distributor in the nation. That is  
3 emergency vehicle lighting. Whelan is  
4 an emergency manufacture of lighting.

5 Q. Can you spell that?

6 A. W-H-E-L-E-N.

7 We have 11 locations. I run  
8 Maryland and Pennsylvania, and my boss  
9 has had me start a location in  
10 Pennsylvania because of the amount of  
11 customers that I've had follow me or  
12 want to deal with me.

13 Q. So --- and where did you ---  
14 where is your work presently based?  
15 Where you work from? Do you have an  
16 office or location?

17 A. I'm in --- I have an office  
18 that I run for them in Somerset. 426  
19 Doc Smith Drive, Somerset, PA 15501.  
20 And our headquarters is based in  
21 Millstone, New Jersey.

22 Q. When --- how long have you been  
23 familiar with Lake Stonycreek? How  
24 long have you known about it? Your  
25 first experience in terms ---

1 A. Sure.

2 My first experience with Lake  
3 Stonycreek, I was close friends with  
4 A.J. Ott. And ---

5 Q. Can you spell that? Can you  
6 spell that?

7 A. A-J, and then Ott, O-T-T.

8 Q. Very good.

9 A. And they are back underneath  
10 the bridge. Right beside John Muir.  
11 I don't know if that's trail ends or  
12 whatever the road was called, I'm not  
13 sure. But I grew up ---

14 Q. Down by the dam?

15 A. It is. By the spill way.

16 Started there as a kid,  
17 probably from the age of --- I don't  
18 know, 10, 11 years old, I would start  
19 to go there with them. I was there  
20 pretty much every summer. It was the  
21 best experience of my life, being from  
22 Johnstown and being able to be out  
23 here and run wild and free, and ---  
24 and you know, not be around all the  
25 city. Spent a few years out here.

1           As I started getting older,  
2 around the ages of 17, 18, I had to  
3 make a decision in life, whether I was  
4 going to, you know, go to school or  
5 grow up or get a real job. And of  
6 course, we all worked for, you know,  
7 Janice, helping putting pools in when  
8 we were younger. And you know, we'd  
9 go with Barry and everything. But I  
10 spent many years here as a kid. I was  
11 even with AJ on the --- this --- the  
12 Lake Stonycreek ski team at one point.

13         I still have the shirts. I saved  
14 them. Just a lot of things I remember  
15 about this community, and you know,  
16 being around. You know --- the ---  
17 seeing the Tony Debunos and the J.Js,  
18 and here in the Blackburns, and the  
19 Bear --- those were the big names back  
20 in the day, when I was a kid.

21           I always told Janice that it  
22 was my, you know --- I wanted to be  
23 here. And if you ever sold your  
24 house, I'd like to buy it from you.  
25 And, you know, I was young, so it was

1 laughable. And when I met my wife,  
2 over 20 years ago, I told her. I  
3 said, "It's my dream to be out there,  
4 own a house someday." I said,  
5 "Hopefully we can build a business and  
6 get to the point where we can." And  
7 it's been my dream to be here. For my  
8 kids to experience this --- this lake.  
9 We were in Richland Township. We  
10 owned a nice home on Theater Drive.  
11 We had a place in Raystown. We owned  
12 a park model camper that was brand  
13 new. We had our boat inside of a lift  
14 and it was two-hour drive. And with  
15 two young kids and barking dog, the  
16 wife said, "Where did you want to live  
17 again?"

18 And we went on Zillow, and the  
19 next day we pulled into Greg Lowry's  
20 residence. He was on the porch. He  
21 showed us the house, and I said,  
22 "You'll have an offer tomorrow." And  
23 here we are.

24 Q. And where is that? Is that  
25 where you currently reside as well?



1 That same place?

2 A. I current reside at 6170 Lake  
3 Shore Road, Creedence, PA, 15541.

4 Q. And is that the house you were  
5 just talking about?

6 A. Yeah.

7 Q. So, that's the only property  
8 you own? The only house you own is  
9 the Stonycreek property?

10 A. Yes.

11 Q. And when again did you purchase  
12 that?

13 A. October of '17.

14 Q. How long have you known the  
15 other Plaintiffs in this case, Mr.  
16 Neel and Mr. Cavanaugh? If you  
17 remember when you first met either one  
18 of them.

19 A. I would say that I met Lee in,  
20 right before the shareholder's meeting  
21 in 2018. And I would say that I met  
22 Mr. Neel, end or beginning of '19. I  
23 can't be sure --- exactly sure on  
24 that.

25 Q. The end or beginning of 2019?

1 A. The end of '18, or the  
2 beginning of '19.

3 Q. And what were the circumstances  
4 under you --- under which you met Mr.  
5 Cavanaugh? How --- how did you meet  
6 him?

7 A. I attended some board meetings.

8 I was --- talked to a few board  
9 members. I started asking different  
10 styles of questions. Jack Hershberger  
11 was at my house to look at my boats  
12 and jet skis for a possible variance.

13 Talked about the board. Met Billy  
14 Blackburn, talked about the board.  
15 Sent him a message actually on  
16 Facebook, saying I remember you from  
17 when I was a kid, and wonder if you  
18 had some time, if we could talk about  
19 the lake. He said sure. Going  
20 through different steps, different  
21 things. Wanting to get acclimated  
22 with how things work. Rules, regs,  
23 start going to meetings. Watching how  
24 the meetings work. You know, wanting  
25 to know how the business is ran. How

1 the corporation is ran. You know,  
2 started asking questions. And then  
3 one day, someone said, you know, you  
4 should go talk and meet Mr. Cavanaugh.

5 He was one the board. He served this  
6 board for many years, him and Rolf  
7 DeVries have done ---

8 Q. Could you identify who  
9 suggested you meet with Mr. Cavanaugh?

10 A. People in the community.

11 Q. Anybody by name?

12 A. Neighbors. Maybe Pete  
13 Kaultenbaugh, my neighbor. Maybe ---  
14 I started looking into the lot owners'  
15 group. Chrissy Morales's dad, George  
16 Light, before his passing. Chrissy  
17 maybe mentioned Cavanaugh's name. I  
18 heard Neel's name. So, I started  
19 doing my own homework of who are these  
20 people and let's go --- let's go meet  
21 neighbors. Let's go ask questions.

22 Q. Proceed with your narrative.

23 A. I'm --- I'm trying to get back  
24 to where I was. You interrupted me.

25

ATTORNEY MUST:

1                   Go ahead and ask your  
2                   question. I think that was ---  
3                   he was asking how you --- how  
4                   you did you get to know  
5                   Cavanaugh?

6                   ATTORNEY CASCIO:

7                   Yeah, right. Pardon me?

8                   THE WITNESS:

9                   Yes. So you were asking  
10                  how I met Lee Cavanaugh?

11                  ATTORNEY CASCIO:

12                  Yes, yes.

13                  THE WITNESS:

14                  So --- and I answered  
15                  you upon how I found who he  
16                  was. So, I went to Lee's  
17                  house. Knocked on his door.  
18                  Said, "Mr. Cavanaugh, I'm Mike  
19                  Jenkins. I hear you've spent  
20                  lifelong here at this lake.  
21                  You know a lot about the lake.  
22                  You've served with a lot of  
23                  people. Why did you resign?  
24                  What is the status of the lake?  
25                  Why did you resign? Are

1           there, you know --- what are  
2           the rules? What are the regs?

3           Can you tell me what you know  
4           about the lake? These are some  
5           of the points that I wanted to  
6           ask in regards to, you know,  
7           transparency and how to get  
8           things done. And how things  
9           worked in the past. Was ---  
10          was the --- was it always this  
11          difficult to do x, y, and z?  
12          We can get into more of that,  
13          if you want." And that's our -  
14          -- our conversation started.  
15          And it actually --- from there,  
16          seeing him as respected person,  
17          knowledgeable. I liked a lot  
18          what he had to say, and we kind  
19          of hit it off from there, and  
20          became friends.

21          BY ATTORNEY CASCIO:

22          Q.        So, this was all --- you ---  
23          you're saying this was before the  
24          shareholders meeting in 2018, is when  
25          you met Cavanaugh?

1 A. Yeah.

2 Q. Okay.

3 How long before the  
4 shareholder's meeting?

5 A. I don't think it was --- I  
6 don't think it was really long at all  
7 before the shareholder's meeting. I  
8 know that Lee did stand up at that  
9 shareholder's meeting or tried to  
10 nominate me or something like that.  
11 Or --- I really didn't know how to  
12 process work, or it just seemed like -  
13 -- I believe, as I recall, it --- or  
14 Lee said, you know, "I'll help you and  
15 or I'll let some people know, or we  
16 can get you vote --- you know, try to  
17 get you some votes." Or, you know, if  
18 there's a nomination process. But I  
19 was very new into it, just learning  
20 things into.

21 Q. Just so I understand, this is -  
22 -- this all started sometime before  
23 the 2018 meeting of the members?

24 A. The shareholders meeting, yes.

25 Q. How far before? Can you tell

1 me?

2 A. I don't recall whether it was a  
3 week or a month, sir. I know it was  
4 right before the shareholder's  
5 meeting. It could have been two  
6 weeks, a week, three weeks. I don't  
7 have exact dates for you. But I did  
8 approach Mr. Cavanaugh myself.

9 Q. Did you have anything specific  
10 that you wanted to present to the  
11 board when you went to see Mr.  
12 Cavanaugh? Did you have any specific  
13 matter you wanted the board to address  
14 on your behalf?

15 A. Oh, went I went to the board  
16 meetings after I moved there? Yeah, I  
17 mean, it was in regards to getting  
18 approval for my Chaparral boat that  
19 was three inches longer than the 20  
20 feet. It was 20.3 inches, because it  
21 of the swim deck. Jack Hershberger  
22 himself reviewed that one. Two jet  
23 skis that I believe were 15 or 20  
24 horsepower over the --- over the  
25 actual horsepower limitations at that

1 time. Those were some of my requests.

2 I wrote an introduction email of who  
3 I was, why I was here, why I moved  
4 here. Presented that to the board.  
5 The board gave me the opportunity to  
6 stand up and speak at a meeting in  
7 regards to what my asks were.

8 They were granted. And then  
9 from that point on, it got to the  
10 point where I wanted to get more  
11 informed of how things worked. You  
12 know, how processes worked. Why, you  
13 know, this --- you know, how many  
14 other, you know --- it just, my  
15 curiosity just, you know. I --- I ---  
16 I did a lot of homework myself of  
17 boats that were over length. I did a  
18 lot of homework of jet skis that were  
19 already over horsepower. I started  
20 asking questions in regards to how  
21 many jet skis were registered and  
22 asking for the documentation, to see  
23 if the people actually wrote down the  
24 actual horsepower or didn't write down  
25 the actual horsepower. I also, you



1 know, just did a lot of my own  
2 homework and started making me  
3 question, you know, different  
4 approvals. So, yes, I started asking  
5 questions. I started sending email  
6 requests. Started --- once I started  
7 asking things, it was like the brick  
8 wall went up.

9 Q. So, you acquired your home, am  
10 I correct, in October of 2017? That's  
11 when you moved to the lake, October of  
12 2017.

13 A. Roughly Halloween of '17.

14 Q. Correct.

15 And you said the --- And if I'm  
16 understanding you correctly, in the  
17 spring of 2018, is when you --- you're  
18 describing your activities and what  
19 was going on in the fall and spring?

20 A. No, sir. I'm describing what  
21 happened from basically --- the  
22 letters came out in January from the  
23 lake to ---

24 Q. January of what year?

25 A. '18.

1 Q. All right.

2 So, this is --- I want to  
3 establish that.

4 A. I understand.

5 Q. This is right after you moved?

6 A. Understand, yes. Yes, you are  
7 correct.

8 Q. Go ahead.

9 A. I believe that the information  
10 got sent out by the corporation at the  
11 time, for your lot fees, your boat  
12 fees, your stickers, registrations.  
13 Applied and filed my paper. Was told  
14 no. Then, you know, went ---

15 Q. The --- excuse me. The  
16 paperwork is requesting variances from  
17 the regs?

18 A. No, sir.

19 Q. What kind of paperwork?

20 A. The paperwork that was sent  
21 from the SVDC for your lot fees or  
22 your boat sticker fees. Your  
23 applications for your boat fees.

24 Q. Oh, okay.

25 A. I filled the paperwork out.

1 Was then notified that I would need to  
2 speak with a board or get a variance.

3 That my vessel was three inches too  
4 long. It didn't meet the  
5 requirements. That then sparked me to  
6 write my email to the board in regards  
7 to who I am. And then from that point  
8 forward, as in my answer, I continued  
9 with wanting to know more about how  
10 other vessels were on this lake.

11 Q. So, you were concerned about  
12 the process of getting a variance from  
13 the regulations? What was your  
14 purpose in all this?

15 A. No. So, my answer was I filed  
16 paperwork and was told I needed a  
17 variance. My process was in which to  
18 how other vessels on the lake were  
19 granted a sticker.

20 Q. Were you asserting that those  
21 other vessels were not compliant with  
22 the lake's rules?

23 A. That is correct.

24 Q. So, you were wondering how they  
25 got permission?

1 A. That is correct.

2 Q. They got a variance? Is that  
3 what you got, a variance? Or some ---  
4 you requested some relaxation of the -  
5 -- of the particular regulation? Is  
6 that what you're saying?

7 A. The board's wording was, "We  
8 might have to grant you a variance."

9 Q. Okay.

10 A. My --- on the variances, what  
11 is a variance to your lake? How does  
12 your variance work? Is it a year-by-  
13 year variance? Is it relooked at  
14 every year? Larry Ross and other  
15 people explained to me what a variance  
16 was. Marcia Rogish clearly does not  
17 like to grant variances. She worded  
18 that at --- during that time of that  
19 meeting. And going from there, I was  
20 just curious of how many variances  
21 were actually on the lake at that  
22 time. And I found that there was not  
23 many. But I also found that --- from  
24 how many variances were, there was a  
25 lot more units on the water than there

1 was variances that would have required  
2 a variance.

3 Q. Did you receive the variance?

4 A. I did.

5 Q. And again, what was that for?

6 Just a couple of inches, temp to  
7 stern?

8 A. Three inches of my boat. They  
9 granted me a variance to allow my boat  
10 that was three inches longer on the  
11 water. And they granted me a variance  
12 to allow both my jet skis on the lake.

13 Q. And what was the --- What was  
14 non-conforming about your jet skis?

15 A. As I said in my answer before,  
16 I believe it was somewhere --- 15, 20  
17 horsepower. I don't know if it was 25  
18 over. I don't remember exactly at the  
19 time.

20 But my horsepower did not meet  
21 the SVDC requirement, and that is why  
22 I needed a variance.

23 Q. Did you feel that the SVDC  
24 requirements were unreasonable?

25 A. For my variance?

1 Q. Did you feel they were  
2 unreasonable in the first place?

3 A. No.

4 Q. What did you understand to be  
5 the reason for those types of  
6 regulations?

7 A. Oh, I understand the types of  
8 regulations are for safety. For rules  
9 that need to, you know ---  
10 regulations.

11 What I was getting at in my  
12 answer, sir, is I do believe that the  
13 variance was fair. I do believe that  
14 it --- you could have a variance.  
15 What I was saying in my answer is I  
16 was questioning the fact that there  
17 was other vessels on there without a  
18 variance.

19 ATTORNEY MUST:

20 Can we just take five  
21 minutes?

22 ATTORNEY CASCIO:

23 Sure.

24 ---

25 (WHEREUPON, A PAUSE IN THE RECORD WAS

1 HELD.)

2

---

3 BY ATTORNEY CASCIO:

4 Q. All right.

5 Can you recall exactly what  
6 month or what year that was? So, what  
7 month of the year that was?

8 A. I don't recall the month, at  
9 this moment, without looking at my  
10 notes or emails or information. So,  
11 no. But it was '18.

12 Q. Was it prior to the summer?  
13 The boating season? Was it prior to  
14 boating season?

15 A. Yes. When did you acquire that  
16 boat and your jet skis? Were they ---  
17 when did you buy them? Did you buy  
18 them before you put on --- before you  
19 went to the meeting?

20 A. I owned them before I moved to  
21 Lake Stonycreek.

22 Q. My question was when did you  
23 buy them?

24 A. '16, '17.

25 Q. Did you attend any other

1 meetings of the board following that  
2 spring meeting, whenever it was?

3 A. Yes.

4 Q. Okay.

5 Do you --- can you describe  
6 what your --- whether or not you were  
7 present at all of the meetings  
8 following that time?

9 A. So, are you asking me if I was  
10 present from the spring on?

11 Q. Yes.

12 A. Yes.

13 Q. How often was the --- did the  
14 board meet?

15 A. Every third Thursday of the  
16 month.

17 Q. So, what were you --- scratch  
18 that.

19 Did you have any other requests  
20 or issues that you brought to the  
21 board following the issuance of your  
22 permit --- variance for your boat and  
23 the permit for the jet ski?

24 A. Yes.

25 Q. And what --- can you describe



1 what --- those conversations?

2 A. Would you like me to describe -  
3 -- you want me to describe the  
4 conversation? Or you want me to  
5 describe what the request was?

6 ATTORNEY MUST:

7 He said the issues.

8 BY ATTORNEY CASCIO:

9 Q. The issues.

10 What was your point in talking  
11 to them?

12 A. Oh. It started as email  
13 requests for information.

14 Q. To whom were you sending  
15 emails? Is there a board address? Or  
16 is it an individual ---

17 A. I was sending --- I'm sorry. I  
18 interrupted you. I'm sorry, I  
19 interrupted you. Did you ---

20 Q. Who were you --- who were  
21 sending them --- these emails to?

22 A. Oh, I was sending those emails  
23 with the list that was provided on the  
24 website of all the board of directors'  
25 email address.

1 Q. So, you were emailing to each  
2 individual board member.

3 Is that correct?

4 A. Ninety percent of the time, I  
5 believe it was to every board member.  
6 There were occasions that I sent just  
7 to the president.

8 Q. And have you --- you have those  
9 emails? Or do we have copies of those  
10 already?

11 A. I provided you with all of  
12 those in discovery.

13 Q. And what were the nature of  
14 those communications? What were ---  
15 what was your purpose?

16 A. What were my requests or what  
17 was my purpose of wanting them?

18 ATTORNEY MUST:

19 No, he said what was the  
20 nature of the emails?

21 THE WITNESS:

22 The emails were subject  
23 lined every time. The first  
24 initial email would have been  
25 what I was requesting. The

1 second email would be on the  
2 same topic, second request if  
3 the request was not filed or  
4 filled. And some of the topics  
5 were in regards to  
6 shareholders. Shareholders  
7 list. Different information.  
8 QuickBooks, reports, general  
9 information and questions in  
10 regards to the corporation that  
11 I was a shareholder in.

12 BY ATTORNEY CASCIO:

13 Q. How many shares did you have at  
14 this time?

15 A. I first found out to run for  
16 the board that I needed a share.

17 ATTORNEY MUST:

18 His question is how many  
19 shares did you have?

20 ATTORNEY CASCIO:

21 Yes.

22 THE WITNESS:

23 Oh, at that time, in the  
24 beginning? I don't recall.  
25 Fifty to a hundred, maybe.

1 BY ATTORNEY CASCIO:

2 Q. Where did you acquire them?

3 How did you acquire them?

4 A. Bought them at the annual  
5 meeting.

6 Q. Okay.

7 You bought them directly from  
8 the corporation, not any other  
9 shareholders?

10 A. No, I bought them at a table  
11 they had set up to buy shares.

12 Q. Okay.

13 What did you pay for your  
14 shares? Do you recall?

15 A. \$10.00 a share. \$10.00 a  
16 share.

17 Q. And do you have the  
18 recollection at this --- if you don't  
19 that's quite all right --- of how many  
20 shares you own in the 2018 summer,  
21 when this was going on.

22 How many did you have?

23 A. I don't recall if it was 50 or  
24 100 in 2018. I know that our records  
25 of checks would request --- would

1 reflect that. But I'm --- I don't  
2 think more than 100 in '18, because I  
3 knew the money went back to the  
4 community, so. I don't believe more  
5 than 100 in '18.

6 Q. And what were you paying per  
7 share? How much?

8 A. \$10.00.

9 Q. \$10.00.

10 Why were you buying the shares?  
11 What was your purpose?

12 A. Well, you had to be a  
13 shareholder to be able to attend the  
14 annual meeting. You had to be a  
15 shareholder to be able to vote for a  
16 director. You had to be a shareholder  
17 to be a part of the shareholders. And  
18 to be a shareholder, you got to buy  
19 shares.

20 Q. Where you did you get this  
21 information? Did you just --- you  
22 just started?

23 A. From Jack Hershberger and our  
24 current president at that time, Larry  
25 Rosage. And the board members.

1 Q. What was the information that  
2 you received that makes you think you  
3 had to have shares?

4 A. If you want to attend the  
5 meeting, you must be a shareholder.  
6 If you want to vote, you must own a  
7 share. The more shares that you own,  
8 the more votes you own. For each  
9 share that you own during the  
10 director's or voting for the nominees,  
11 each share would be then accumulative.

12 So, one share would equal 11 votes.  
13 And you could spread those votes  
14 amongst any one on the board that you  
15 so choose to.

16 Q. And this was information you  
17 received from other people you had met  
18 or knew who developed this  
19 corporation?

20 A. This information I received  
21 from the board.

22 Q. Who on the board? Name names.

23 A. I just did. Larry Rosage, Jack  
24 Hershberger, Billy Blackburn. Anyone  
25 that I asked about running or how to

1 get involved.

2 Q. We'll get to running in a  
3 minute. But you --- you were --- you  
4 were questioning individual members of  
5 the board about how the board  
6 operates.

7 Is that a simple way to put it?

8 A. I asked general questions in  
9 regards to how to be involved or to  
10 get involved or what it took to be  
11 involved. And then at one meeting,  
12 Jack Hershberger came over beside my  
13 father, myself, my wife and my kids,  
14 while I was giving my presentation on  
15 my boat. Kneeled down beside me and  
16 told me the direction, "It's coming  
17 up. If you want to be a director,  
18 you've got to be a shareholder.  
19 You've got to have a share to be on  
20 the board." I asked more questions in  
21 regards to why and how. Billy  
22 Blackburn, Larry Rosage, and Larry  
23 Rosage has openly said it at meetings.  
24 That if you want to be a part, and  
25 it's portrayed to the community, you

1 have to be a shareholder to be  
2 involved, still, to this day.

3 Q. I recall that you have attended  
4 just about every deposition that's  
5 been taken in this --- in this room on  
6 this case.

7 Is that correct?

8 A. Yes, sir.

9 Q. Did you hear any testimony  
10 concerning how the annual meetings had  
11 been conducted prior to the time that  
12 you bought the property at Lake  
13 Stonycreek? Did you hear any  
14 testimony about how great informality  
15 in how these hearings --- or these  
16 meetings were being conducted?

17 A. Well, that's a compound  
18 question.

19 Q. Yeah, I asked you two  
20 questions. It's a deposition.

21 ATTORNEY CASCIO:

22 Go ahead. You can  
23 clarify.

24 ATTORNEY MUST:

25 Yeah. I think what



1           you're asking is did you hear  
2           any questions about --- did you  
3           hear any testimony about the  
4           informality of the board? Is  
5           that what you ---

6                     ATTORNEY CASCIO:

7                     Yeah, I was asking him  
8                     did he have any knowledge of  
9                     the manner in which board  
10                    meetings have been conducted in  
11                    prior years?

12                    ATTORNEY MUST:

13                    Okay.

14                    THE WITNESS:

15                    So, to answer that  
16                    question, through sitting  
17                    through depositions and talking  
18                    to people ---

19                    ATTORNEY MUST:

20                    No, his question was  
21                    through deposition testimony  
22                    only. That's what he asked  
23                    you.

24                    THE WITNESS:

25                    Okay.

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ATTORNEY MUST:

Sitting in this room,  
have you heard testimony about  
how the board was run prior to  
2018, is what I think he's  
asking you.

THE WITNESS:

Yes.

BY ATTORNEY CASCIO:

Q. Okay.

Excuse me. What can you ---  
Excuse me.

What was your purpose? Did you  
have an interest in getting on the  
board?

A. Yes.

Q. Okay.

Can you describe for --- hear  
what your interest was? Why you had  
an interest in getting board? What  
was your purpose?

A. My purpose was to be a part of  
the community I live in. In short, be  
there in the future for my children.  
To ask the questions that any person

1 or any HOA or member of a share or  
2 company would want to ask. And to get  
3 more involved with my community.

4 Q. Did you ever ask to look at the  
5 records or records of the corporation?  
6 Ever ask to look at minute books or  
7 anything from prior years?

8 A. Yes.

9 Q. Okay.

10 What were the nature of those  
11 requests?

12 A. To get informed.

13 Q. The nature --- what --- what  
14 did you ask for?

15 A. Oh. Again, you would have a  
16 lot of that in our discovery  
17 information. Again, transparency,  
18 minutes, QuickBooks, and shareholders'  
19 information. Name and share. I  
20 specifically sent an email in regards  
21 --- I would just take a name and  
22 share. I didn't need address, phone  
23 number or email. That was it.

24 Q. Did you ever ask to look at the  
25 corporate documents?

1 A. Yes.

2 Q. What type of documents were you  
3 looking for?

4 A. I've asked for many different  
5 documents. Can you specify?

6 Q. Articles of incorporation?

7 A. Of course.

8 Q. Did you receive copies of the  
9 articles of incorporation?

10 A. The articles of incorporation.  
11 So, geez. Articles of incorporation -  
12 -- no.

13 Q. Did you ask for them?

14 ATTORNEY MUST:

15 If you recall.

16 BY ATTORNEY CASCIO:

17 Q. If you recall? Correct.

18 A. Off the top of my head, I don't  
19 know of that specifically. I don't  
20 recall.

21 Q. Were you interested in  
22 financial information or corporate  
23 information?

24 A. Both.

25 Q. What financial information did

1 you want to see?

2 A. QuickBooks.

3 Q. Did Larry --- it's a fact,  
4 isn't it, that Larry Rosage offered to  
5 sit down and work QuickBooks with you?

6 ATTORNEY MUST:

7 Object to the form. You  
8 can answer.

9 ATTORNEY CASCIO:

10 Okay.

11 So ---

12 THE WITNESS:

13 I can answer?

14 ATTORNEY MUST:

15 Yes.

16 THE WITNESS:

17 So, I made multiple  
18 requests of information.  
19 QuickBook was one of them.  
20 Larry did offer to sit down and  
21 go over different things.  
22 Larry and I actually had two in  
23 person meetings at his house.  
24 I believe I provided a list of  
25 like 21 different things. He

1           asked me what my issues were.  
2           Never reviewed --- received ---  
3           I know that one time, he sent  
4           an email in regards that he  
5           would be willing to do that for  
6           us. Between my schedule and  
7           Mr. Neel's schedule.

8                         So, this is actually  
9           going way past the time frame  
10          that you're talking about. And  
11          then, at that point, he --- I  
12          asked him --- offered a few  
13          dates. I believe his email  
14          back to me is because you've  
15          got attorneys involved ---  
16          which there wasn't a suit at  
17          time. It was a letter. He  
18          would not provide that  
19          information.

20                         ATTORNEY CASCIO:

21                         We'll get to the, to  
22          that ---

23                         THE WITNESS:

24                         I didn't know how to  
25          answer you best. I'm sorry.

1 BY ATTORNEY CASCIO:

2 Q. You didn't understand my  
3 question.

4 I was just trying to understand  
5 were your issues with the governance  
6 or the finances of the corporation?

7 A. My issues would have been  
8 governance and I wouldn't have been  
9 able --- I can't answer on finance  
10 because I didn't see it, sir.

11 Q. What was the purpose of  
12 requesting this information? What did  
13 you intend to do with it?

14 A. Which information?

15 Q. Let me rephrase it.

16 You were making these request  
17 within months of your acquisition of  
18 the property if I understand correct.

19 Correct?

20 A. Made --- so, you're saying I  
21 made these requests months after  
22 purchasing. So, it would have been --  
23 -

24 Q. As opposed to years. This was  
25 in the first year. This would have --

1 - you said you bought the property in  
2 October of 2017.

3 A. Mm-hmm (yes).

4 Q. And then ---

5 A. Yes.

6 Q. If I'm understanding correctly  
7 --- you going on in 2018?

8 A. Yes.

9 Q. Okay.

10 What was your concern?

11 A. I have multiple concerns, and  
12 one of my concerns in how they formed  
13 opinions or how they formed to be able  
14 to vote on something. And I wanted to  
15 have the information in front of me to  
16 review for myself, to see what the  
17 stance of the company was. The A&R,  
18 just anything that we have as a  
19 company. And in regards to the  
20 bylaws, rules, regs, why not? It's  
21 our community.

22 Q. So, when you say the company,  
23 you're talking about the corporation,  
24 SVDC?

25 A. Yes.



1 Q. And you had an interest in  
2 gathering --- in knowing --- knowing  
3 about the corporation?

4 A. I had an interest in knowing  
5 about the corporation.

6 Q. What did you want to --- what  
7 was the nature of that interest?

8 A. The nature of that interest,  
9 again, in my answer, was to get  
10 informed. To see it. To know it. To  
11 review it. I was looking to --- I was  
12 looking to be a part of the board or  
13 run for the board. I wanted to see  
14 what I was getting myself into.

15 Q. So, what were you --- what  
16 information --- getting informed.

17 What were you trying to get  
18 informed about?

19 A. Everything.

20 Q. Corporate structure of the  
21 corporation?

22 A. Everything.

23 Q. Did you ask for information  
24 relating to the corporate structure of  
25 the corporation?

1 A. Sir, at that time, I don't  
2 recall if I asked for articles of  
3 incorporation or corporate structure.  
4 I believe I asked for information that  
5 I was allowed to have a as shareholder  
6 upon request of any information of our  
7 corporation.

8 Q. Did you know about the  
9 conversion to a non-profit corporation  
10 in 2005?

11 A. At that time, in '17 or '18, I  
12 did not. I then, as I started asking  
13 more questions, found out that it was  
14 converted to something in 2005.  
15 Wasn't aware of exactly what that was  
16 because I didn't have that information  
17 in front of me. So, I did know after  
18 that.

19 Q. How did you find out? Who did  
20 you ask? Who told you that?

21 A. They started talking about it  
22 at meetings. I believe Dare Sinclair  
23 told me he was a part of it. I  
24 believe getting in more questions, Lee  
25 may have told me they did something in

1 '05. So, then it started sparking my  
2 interest. Was that filed with the  
3 state? And where's the rest of our  
4 information?

5 Q. And did you make further  
6 inquiries, or did you check if it was  
7 ever filed with the state?

8 A. Actually, I did make more  
9 inquiries, multiple request of  
10 information inquiries and was never  
11 granted most of it.

12 Q. You've been quoted, I think, as  
13 saying you were encouraged to buy  
14 stock in the corporation.

15 Is that correct?

16 A. From the board.

17 Q. Well, encouraged by the board?  
18 By members of the board?

19 A. What was --- and my answer was  
20 told to me, to be on the board, you  
21 have to own shares and the more shares  
22 you buy, the more votes you get, sir.

23 Q. Who told you that?

24 A. Oh, that was said by Jack  
25 Hershberger and Larry Rosage.

1 Q. Any of the co-complainants in  
2 this case? You ever discuss this with  
3 Mr. --- the Plaintiffs --- the other  
4 Plaintiffs in this case?

5 A. Before the lawsuit?

6 Q. Before, after.

7 A. Oh, I believe before the  
8 lawsuit, we discussed the purchase of  
9 shares. Of course, we would have  
10 discussed the purchase of shares. How  
11 many do you have? How many do I have?  
12 I want to buy more. I ---

13 Q. How did you make decisions  
14 about how many shares you wanted to  
15 make? What was the significance in  
16 you --- to you in the purchases?

17 A. What influenced me?

18 Q. Yeah, what --- what were you --  
19 - how did you decide how many shares  
20 to buy?

21 A. Oh. Ran for the board. I just  
22 knew that I wanted --- wanted more  
23 shares for the fact of it was more  
24 votes for me. And I've seen other  
25 things going wrong that I would like

1 to make change of having another  
2 person with me on the board, maybe to  
3 have another opinion or not --- be on  
4 the same team.

5 Q. What was your understanding of  
6 the number of shares you had to have  
7 to where you could be on the --- in  
8 order to be on the board? What ---  
9 could you --- could you be elected to  
10 the board if you have one share?

11 A. You could be.

12 Q. You agree with me then? You  
13 could have gotten on the board with  
14 one share.

15 A. No.

16 Q. Why?

17 A. At that time, you couldn't.

18 Q. Okay.

19 You were talking about you  
20 needed to be a shareholder --- excuse  
21 me.

22 ATTORNEY MUST:

23 Yeah, no. I was just  
24 going to say, I think. I don't  
25 know the rules I've seen ---

1                   THE WITNESS:

2                   Yeah.

3                   ATTORNEY MUST:

4                   Practically or ---

5                   Practically speaking, or

6                   literally speaking?

7                   ATTORNEY CASCIO:

8                   Right, I'm just saying -

9                   --

10                  BY ATTORNEY CASCIO:

11                  Q.           My question is, legally, did  
12                  you understand the bylaws require that  
13                  you agree to own one share of stock?

14                  A.           I understood that the bylaws  
15                  required one share of stock.

16                  ATTORNEY MUST:

17                  So, legally, you could  
18                  be on the board if you have one  
19                  share of stock?

20                  THE WITNESS:

21                  Yes.

22                  BY ATTORNEY CASCIO:

23                  Q.           What was your reasons for  
24                  buying more than one share?

25                  A.           My reason to buy more than one

1 share is votes.

2 Q. To accumulate votes?

3 A. Yes.

4 Q. Okay.

5 For yourself?

6 A. And others.

7 Q. All right.

8 Before --- excuse me.

9 The first board meeting you

10 attended was in 2018?

11 A. I don't recall.

12 Q. Would it --- it couldn't have

13 been earlier than 2017, right?

14 A. Well, it could have been the

15 end of '17.

16 Q. Right.

17 That's what I mean. Could have

18 been ---

19 A. You asked me if it was ---

20 Q. I asked '18. If it was --- '18

21 or '17 was your first meeting in

22 attendance.

23 A. I don't recall.

24 Q. How much stock --- do you own

25 any stock in the corporation today?

1 A. Yeah. 10 --- 10 shares, maybe.

2 Q. Okay.

3 When did you meet Mr. Neel?

4 A. That would have been after the  
5 shareholders meeting in '18. It could  
6 have been the end of '18. I wanted to  
7 start something with the lot owners'  
8 association.

9 ATTORNEY MUST:

10 Wait, his question ---

11 When, not why.

12 ATTORNEY CASCIO:

13 Yeah.

14 ATTORNEY MUST:

15 When. Just focus on  
16 what he asked you. When did  
17 you meet him?

18 THE WITNESS:

19 Maybe the end of '18.

20 BY ATTORNEY CASCIO:

21 Q. Under what circumstance ---

22 Okay.

23 Why did you meet him? Did you  
24 ask to meet with them, or did someone  
25 introduce you or how did you get to



1 know Mr. Neel?

2 A. I was told Mr. Neel was the  
3 last person that was involved in the  
4 lot owners' association.

5 Q. By whom?

6 A. Chrissy Morales, George Licht's  
7 daughter.

8 Q. Pardon me?

9 A. Chrissy Morales, George Licht's  
10 daughter.

11 Q. Okay.

12 And how did you arrange the  
13 meeting with Mr. Neel?

14 A. I emailed him.

15 Q. Okay.

16 Have you disclosed that email  
17 in the discovery in this case?

18 A. It might be in there. I think  
19 I searched anything that pertained to  
20 him and I. That email would have been  
21 a beginning of a, "Hello, I'm  
22 Michael." It might be in there.

23 THE WITNESS:

24 I'm sorry, what did you  
25 say?

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ATTORNEY CASCIO:

That's --- may I have  
moment?

THE WITNESS:

Oh, sure. Absolutely.

ATTORNEY CASCIO:

We're back on the  
record.

---

(WHEREUPON, A PAUSE IN THE RECORD WAS  
HELD.)

---

BY ATTORNEY CASCIO:

Q. Just so I'm clear on this, your  
first annual shareholders meeting you  
attended was in 2018, would have been  
on Friday, May 25th, 2018.

Does that sound right to you?

A. Yeah.

Q. I'm going to show you the  
notice of the meeting. Is that ---

A. I moved there in '17, '18.

Yeah. Wait. I'm pretty sure I moved  
here in '17. So, '18 would have had  
to have been my first one, I think.

1 Q. Okay.

2 ATTORNEY CASCIO:

3 I have no further  
4 questions, I believe. So, I'll  
5 hand the questioning over to  
6 Mr. Leake.

7 ATTORNEY LEAKE:

8 Sure. No problem. All  
9 right.

10 So, just as preliminary  
11 matter, gentlemen, and I don't  
12 think --- Jim, you went over  
13 this. So, if there's  
14 objections, are we just kind of  
15 agreeing, as Counsel --- like  
16 the grounds and the  
17 explanations for the objects  
18 are reserved?

19 ATTORNEY CASCIO:

20 Yeah.

21 ATTORNEY LEAKE:

22 Rather than spending  
23 like 20 minutes talking about  
24 exemptions --- objections?

25 ATTORNEY MUST:

1                   Yeah, that's fine with  
2                   me.

3                   ATTORNEY CASCIO:

4                   Yeah, that's fine.

5                   ATTORNEY LEAKE:

6                   All right.

7                   That was just one  
8                   housekeeping thing.

9                   ---

10                   CROSS EXAMINATION

11                   ---

12                   BY ATTORNEY LEAKE:

13                   Q.        Mr. Jenkins, obviously you're  
14                   familiar with me. I'm Attorney David  
15                   Leake and I represent Mr. Dively.

16                   A.        Yes, sir.

17                   Q.        And I questioned you back in  
18                   May of 2019, actually in the courtroom  
19                   we're sitting next to.

20                   Do you recall that?

21                   A.        Yes, sir.

22                   Q.        Okay.

23                   So, as Mr. Cascio had already  
24                   said, if you need to take a break  
25                   during this questioning or you need to

1 consult with Counsel, no problem.  
2 Just go ahead and say that. We'll go  
3 ahead and stop, okay?

4 But I would ask that if I'm in  
5 the middle of question you do attempt  
6 to answer the question, unless you  
7 absolutely need to consult with  
8 Counsel, just so the record is clean.

9 A. Yes.

10 Q. Understand? Okay.

11 Perfect. Also, I'm going to  
12 try to ask the questions in a way  
13 where I'm going to come to a natural  
14 pause and the end the question. That  
15 way you can respond.

16 The court reporter here has to  
17 take down everything and we want a  
18 clean record, okay?

19 A. Yes.

20 Q. All right.

21 Good deal. So, we'll hop right  
22 into it, Mr. Jenkins. I wanted to  
23 start with talking about when you  
24 moved to the lake in October of 2017,  
25 okay?

1           You had mentioned you lived in  
2           Johnstown before moving to Lake  
3           Stonycreek.

4           Is that correct?

5           A.       Yes.

6           Q.       Okay.

7           And you bought the house in  
8           October of '17, or you moved in or  
9           both?

10          A.       Moved in right before  
11          Halloween.

12          Q.       Okay.

13          All right.

14          So, before you moved in and  
15          bought this residence, did you ever  
16          own a house on a lake before that?

17          A.       On a lake?

18          Q.       Yes.

19          A.       No.

20          Q.       Did you own a boat or jet ski  
21          before purchasing this house?

22          A.       Yes.

23          Q.       Okay.

24          And let's start with the boat.

25          What type of boat was it?

- 1 A. It was a Chaparral.
- 2 Q. Okay.
- 3 When did you buy the Chaparral?
- 4 A. I believe in '16.
- 5 Q. Okay.
- 6 And what about the jet skis?
- 7 A. Same time.
- 8 Q. Okay.
- 9 Now, did you buy those in  
10 anticipation of moving to Lake  
11 Stonycreek?
- 12 A. No.
- 13 Q. Okay.
- 14 What other --- what lake were  
15 you using those on?
- 16 A. Raystown.
- 17 Q. Okay.
- 18 All right.
- 19 Now, you had moved there, I  
20 believe, and we have established, in  
21 '17.
- 22 When did you become a board  
23 member?
- 24 A. When did I become a board  
25 member?

1 Q. Yes.

2 A. Was that --- in '20. End of  
3 '19, or '19 to '20. Or is it '20 to  
4 '21? I don't --- I don't recall.

5 ATTORNEY MUST:

6 No.

7 THE WITNESS:

8 I don't recall.

9 ATTORNEY LEAKE:

10 If you don't recall, you  
11 just tell us you don't recall.

12 THE WITNESS:

13 I don't recall.

14 BY ATTORNEY LEAKE:

15 Q. Okay.

16 All right.

17 And whenever you moved to the  
18 lake, what was your understanding of  
19 the system for voting board members?  
20 How did it work?

21 A. When I moved there?

22 Q. Yes.

23 A. Did not know when I moved  
24 there.

25 Q. Okay.



1           That first meeting that you  
2 went to, that first annual meeting, I  
3 think, that was being spoken to in  
4 2018, how was the voting done for the  
5 board in that meeting?

6           A.       For the directors?

7           Q.       Yes.

8           A.       I believe it was done by  
9 shares.

10          Q.       Done by shares?

11          A.       Yeah.

12          Q.       Okay.

13                 So, there wasn't anybody  
14 raising their hand to vote? You don't  
15 recall that?

16                         ATTORNEY MUST:

17                         Just objection, in that  
18 there's --- it could still be  
19 by shares if you raise. "I  
20 have five shares. I have ten  
21 shares."

22                         ATTORNEY LEAKE:

23                         Sure. I'll clarify the  
24 question to make the record  
25 clean.

1 BY ATTORNEY LEAKE:

2 Q. Do you recall anybody raising  
3 their hand at the annual meeting to  
4 vote shares?

5 A. No.

6 Q. Okay.

7 ATTORNEY MUST:

8 No --- I'm sorry, I'm  
9 sorry. No, you don't recall or  
10 no they didn't do it?

11 THE WITNESS:

12 Oh. No, I don't recall.

13 ATTORNEY MUST:

14 Okay.

15 That's fine. That was  
16 what he asked. I just want to  
17 make sure.

18 ATTORNEY CASCIO:

19 Listen to the question  
20 and answer to it ---

21 BY ATTORNEY LEAKE:

22 Q. So, Mr. Jenkins, you don't  
23 recall how the voting was being done  
24 at the 2018 annual meeting for board  
25 members.

1 Is that correct?

2 A. You asked me a different way.  
3 Now you're saying for board members.  
4 You were saying voting before.

5 So, for board members, it was a  
6 ballot, and it was shares.

7 Q. Okay.

8 So, it was a ballot, and it was  
9 shares, thank you. Okay.

10 Part of the lawsuit that you  
11 and the co-claimants filed, you were  
12 trying to --- to basically keep the  
13 voting system voting with shares.

14 Is that accurate?

15 A. Say again?

16 Q. One of the claims that you made  
17 --- or maybe I'll --- I'll ask the  
18 question in a different way.

19 We've established that when you  
20 moved there, it was --- the board was  
21 voted for using shares, by  
22 shareholders.

23 Correct?

24 A. Yeah.

25 Q. And did you agree with that way

1 of voting --- that voting system at  
2 that point? Did you agree that was a  
3 good way of electing a board?

4 A. Yes.

5 Q. Okay.

6 And you testified earlier that,  
7 in fact, you were attempting to buy  
8 enough shares to vote yourself onto  
9 the board.

10 Correct?

11 A. During the specific time  
12 period, but yes, I needed shares to be  
13 voted onto the board.

14 Q. Okay.

15 And you also mentioned that you  
16 were going to use your shares to not  
17 only put yourself on the board but  
18 maybe even another person that you  
19 would think was appropriate.

20 Correct?

21 A. That is correct.

22 Q. Okay.

23 All right.

24 Now, who could buy shares in  
25 2018?

1 A. Anyone.

2 Q. Anybody? You did not need to  
3 own a lot on the lake to buy shares.  
4 Correct?

5 A. At that time, no.

6 Q. All right.

7 Now, obviously, you and the co-  
8 claimants have filed a preliminary  
9 injunction in May of 2019.

10 Do you recall that?

11 A. Yes.

12 Q. And the purpose of that  
13 injunction was to halt a bylaw change  
14 that would change the system from the  
15 voting with shares to one lot, one  
16 vote.

17 Is that correct?

18 A. Yes.

19 Q. Okay.

20 Obviously, that failed, and the  
21 system was changed and now it's one  
22 lot, one vote.

23 Is that correct?

24 A. That injunction failed. The  
25 vote did not.

1 Q. Yes.

2 So, would you agree with me, as  
3 we sit here today, to get onto the  
4 board, it's required voting from one  
5 lot, one vote? Not one share, one  
6 vote. Correct?

7 A. It is now.

8 Q. It is now. Yes, thank you.

9 Do you continue to disagree  
10 with one lot, one vote?

11 A. Am I allowed to fully answer  
12 this?

13 ATTORNEY MUST:

14 Yes.

15 ATTORNEY LEAKE:

16 Yes, absolutely.

17 THE WITNESS:

18 I believe that the one  
19 lot, one vote --- I actually do  
20 agree with one lot, one vote.

21 ATTORNEY LEAKE:

22 Okay.

23 THE WITNESS:

24 What I disagreed with on  
25 the one lot, one vote, is in

1            regards to how we got there.  
2            How fast it went to get there.  
3            I feel that if you rush  
4            something, mistakes are made.  
5            I also was against the  
6            devaluing the amount of money  
7            of someone's shares. And into  
8            that answer, it was like legend  
9            that, you know, different  
10           things happened. It was  
11           testified here that I heard ---  
12           but I believe that one lot, one  
13           vote is the right way now. I  
14           did not like in how we got  
15           there and the way it happened.

16           BY ATTORNEY LEAKE:

17           Q.            Okay.

18                        So, I'm clear because I think  
19           this is an important point --- so, I'm  
20           clear, you are not asking the court to  
21           go back to one --- to go back to the  
22           shares voting. You're not --- you're  
23           no longer the court for that.

24                        Is that correct?

25           A.            I can't answer because I don't

1 know if the law was properly followed.

2 Q. What are you asking the court  
3 for in this lawsuit?

4 A. Asking the court or asking the  
5 SVDC?

6 Q. What asking the court to do in  
7 this lawsuit?

8 A. I'm asking the court to  
9 evaluate the information that has been  
10 provided. Well, some of the  
11 information that was provided. We  
12 didn't receive all the information.  
13 That's why there's an order, you know,  
14 from the court, to provide the  
15 information. So, it's hard for me to  
16 answer that. What I'm looking for the  
17 court to do is to rule in which a way  
18 of taking all the evidence and emails  
19 and documentary, and letting my  
20 attorneys do the job. If the courts  
21 would so choose to go back to shares  
22 and the way in which it was, that is  
23 to the court. If the court would  
24 grant it to go back that way, do I  
25 feel that everyone should be equal



1       someday? I just agreed with you that  
2       one lot vote was nice. I don't think  
3       we got there the proper way or  
4       possibly the legal way, and that is  
5       for the court to decide. Maybe I  
6       heard you wrong. Do you want to ask  
7       me again?

8       Q.       No, no. I'm just --- I'm just  
9       pondering..

10      A.       I'm sorry. I'm sorry.

11      Q.       So, Mr. Jenkins, maybe I should  
12      phrase the question this way. If you  
13      could, today, dictate how the voting  
14      was for board members, today.

15               How would the voting for board  
16      members in SVDC be done if it was your  
17      choice?

18      A.       Today?

19      Q.       Today.

20      A.       Well, the way it is today is  
21      one lot, one vote, and I would allow  
22      the people to have an accumulative  
23      vote on that one. It just maybe gives  
24      a little bit more advantage to some of  
25      the, you know --- of getting other

1 people on, or maybe more votes for one  
2 of the other. But I --- that's the  
3 best I can answer.

4 Q. Understood.

5 Do you believe that the one  
6 lot, one vote is better for the  
7 community than the shareholder shares  
8 voting?

9 A. As I answered before, I --- I  
10 agree with the one lot, one vote. I  
11 don't agree how we got there.

12 Q. Okay.

13 I had asked you earlier what  
14 you're asking the court for. Is one of  
15 your claims for Attorney's fee?

16 A. I would --- what I'm asking the  
17 court for ---

18 Q. Yes.

19 A. --- is to review the law.

20 ATTORNEY MUST:

21 Remember what his  
22 question was. Are you asking  
23 for attorneys' fees?

24 THE WITNESS:

25 Yes.

1 BY ATTORNEY LEAKE:

2 Q. Okay.

3 In one of your pleadings, I  
4 remember specifically the phrase, "the  
5 good for the community."

6 Are you concerned with the good  
7 for the public community with this  
8 lawsuit?

9 A. I'm concerned that the good for  
10 the community because this lawsuit had  
11 to be filed because of board member  
12 actions.

13 Q. Okay.

14 You believe that your lawsuit  
15 is in the best interest of the  
16 Stonycreek Lake community?

17 A. I actually believe so. If we  
18 could get justice and get rid of the  
19 bad eggs, then yes.

20 Q. Okay.

21 But how --- who's the bad eggs?

22 A. How much time do we have?

23 Q. Are you going to answer my  
24 question?

25 A. Yes.

1 Q. Who is the bad eggs?

2 A. I believe that there is a few  
3 members on the board, a few members on  
4 the past board, anyone who didn't  
5 answer a shareholder's request or  
6 anyone who didn't follow a rule or the  
7 law or allow, I would say would be a  
8 bad egg. I would also say after  
9 reviewing information of our own, that  
10 I've seen a lot of things that were  
11 done improperly to stop people. So, I  
12 do believe there was a lot of bad  
13 eggs.

14 Q. Okay.

15 Can I have names please?

16 A. On the current board?

17 Q. Yeah, let's start with the  
18 current board.

19 A. Wow. I would say not Randy.  
20 He's too new. I don't know much about  
21 him. I would say not Derrick, even  
22 though I disagree with some of the  
23 things that he's done. And I would  
24 say --- I'd have to say Brad, as far  
25 as being one of the bad eggs for not

1 providing all the proper information  
2 to people. Still to this date, even  
3 as in as in the lawsuit updates.

4 Q. And that's Brad Meneilly?

5 A. Meneilly. He's sitting right  
6 here. I also believe that Marcia  
7 Rogish. I'd even say, you know, I  
8 think Joe's a decent guy, but I still  
9 think that he's on the wrong track and  
10 I would include him as a bad egg.

11 Q. Okay.

12 You had mentioned Marcia  
13 Rogish?

14 A. Yes.

15 Q. Okay.

16 And who is the other one?

17 A. Joe Piccini.

18 Q. Okay.

19 So, Mr. Jenkins, so the  
20 record's clear, the current bad eggs  
21 on the current board is Brach McNeely,  
22 Marcia Rogik --- Rogish, excuse me,  
23 and Joe Piccini.

24 Is that all?

25 A. Oh, Jeff Blough, Shelly

1 Glessner.

2 Q. Jeff Blaugh. Shelley Glessner.

3 Okay.

4 Who else?

5 A. Stacey's new. I haven't given  
6 him enough time yet. So, I don't  
7 think he's a bad egg at the moment,  
8 like I said. And then the past  
9 boards, Larry Rosage, just one --- I  
10 would him as the leader of the bad  
11 eggs, to be honest with you.

12 Q. Okay.

13 Larry Rosage ---

14 A. Yeah.

15 Q. --- as the leader of the bad  
16 eggs. Okay.

17 A. Yeah.

18 I would say between --- I would  
19 give Larry that definition because of  
20 past actions also. I believe right  
21 now, the misinformation, the  
22 misleading, the pulling the wool over  
23 the people's eyes. Brad would  
24 probably be my lead on the bad eggs of  
25 this year's board.

1 Q. Brad Meneilly?

2 A. Yes, sir.

3 Q. Okay.

4 A. Just --- just --- just doesn't  
5 want to give proper ---

6 Q. And Mr. Jenkins, if could stop  
7 you just for the record.

8 And when you had mentioned what  
9 a bad egg is, is that somebody that  
10 needs to be removed from the board?

11 Is that fair to say?

12 ATTORNEY MUST:

13 That's his definition,  
14 not yours.

15 ATTORNEY LEAKE:

16 Not --- if it's not, you  
17 can disagree.

18 THE WITNESS:

19 So, say it again?

20 BY ATTORNEY LEAKE:

21 Q. What is --- is --- is a bad egg  
22 a board member that needs to be  
23 removed for misconduct? That's my  
24 question.

25 A. Yes.

1 Q. Okay.

2 Thank you. Excellent.

3 So, I --- go on. The last one  
4 I had, Mr. Jenkins, was Larry Rosage  
5 was the leader of the bad eggs. But  
6 then Brad Meneilly's the current  
7 leader of the bad eggs.

8 Is that correct?

9 A. Yes.

10 Q. Okay.

11 Who else?

12 A. I mean, past --- past boards?

13 Q. Absolutely.

14 A. I don't recall all their names.

15 You guys have a list of like 24 to  
16 28 people that was on the court order.

17 You can refer to that list. I don't  
18 know all the names.

19 Q. Twenty-four to 28 people on  
20 past boards?

21 A. Well, that was the request of  
22 information from court, so there was  
23 like 24, 28 board members on there.  
24 So, I figured you guys would refer  
25 back to the court's actual order,



1 you'd know their names.

2 Q. Are you saying all those people  
3 are bad eggs too?

4 A. I'm saying that we would be  
5 able to review that list and I could  
6 point that out to you. I do not  
7 recall all of the names.

8 Q. So, you even know the bad eggs  
9 from the prior boards from before you  
10 moved in?

11 A. No, from when I started going  
12 to the meetings.

13 Q. Oh, okay.

14 I got it.

15 A. I can't go past going to the  
16 meetings.

17 Q. Understood.

18 A. Were some of them serving on  
19 the board before? Sure. I don't  
20 know.

21 Q. Since 2018, when you first went  
22 to that first annual meeting --- maybe  
23 we should make a list of people who  
24 aren't bad eggs.

25 Is there anybody that you

1 actually think is a good board member?

2 A. Maybe --- maybe the bad eggs --  
3 - I don't know if I should rephrase  
4 that. But I'll stick with it. So,  
5 again, in my testimony, I, you know --  
6 - I said I like Derrick. That I agree  
7 with Derrick did? No. Does that ---  
8 should maybe Derrick step down for  
9 doing different things or not  
10 providing information? Maybe. Maybe  
11 anyone who was the board that didn't  
12 provide their share of information was  
13 a bad egg.

14 Q. Okay.

15 Well, there was a few you said  
16 that at least you're still evaluating.

17 They're too new, right? There  
18 was a few people you mentioned, who  
19 was that? The newer people you  
20 haven't evaluated fully yet.

21 A. I haven't fully evaluated Randy  
22 Weaver. I know Stacey from just in  
23 passing and, you know, having a beer  
24 here and there with him. We don't  
25 agree a lot. So, those two right now,

1 to me. And I already answered you on  
2 Derrick, so. Those two, to me, were  
3 not a bad egg right now.

4 Q. Stacey Weaver and who's the  
5 other one?

6 A. Randy Weaver and Stacey Reed.

7 Q. Stacey Reed.

8 A. And I actually think I don't  
9 know much about Jeff Haines either.  
10 So, Jeff Haines, to me, I'd like to  
11 get to know him more. I think he's  
12 very knowledgeable. If, you know,  
13 that --- I don't know any more about  
14 him.

15 Q. Okay.

16 All right.

17 Do they know that you're  
18 evaluating them as board members? The  
19 people?

20 A. I don't think they would  
21 disagree with evaluating character or  
22 performance.

23 Q. I got it.

24 Do you take notes when you meet  
25 with them about the actions of board

1 members?

2 A. Mental.

3 Q. Okay.

4 A. What am I going to do? Take a  
5 notebook to sit and drink a beer with  
6 somebody.

7 Q. You sold back your shares of  
8 stock.

9 Correct?

10 A. Not all.

11 Q. How many do you own still?

12 A. Earlier I answered, I believe  
13 10. Maybe five to ten.

14 Q. So, your testimony is that SVDC  
15 still has shares of stock outstanding?

16 A. Excuse --- people still own  
17 shares.

18 Q. Okay.

19 You ran for the board what  
20 year?

21 A. It's been such a long time. I  
22 think I was on in 2020, 2021-year  
23 frame --- timeframe. '19, '20, '20,  
24 '21. I don't remember.

25 Q. Okay.

1 A. I know I was on.  
2 Q. Were you on for one year?  
3 A. Yes, sir.  
4 Q. What was your position?  
5 A. Board member.  
6 Q. Okay.  
7 So, you didn't hold an  
8 executive office or anything like  
9 that?  
10 A. I did not.  
11 Q. Okay.  
12 While you were on the board ---  
13 I'll strike that.  
14 I want to go back.  
15 What year did you sell Team  
16 Force? '18? Was it '18? What year  
17 did you sell Team Force?  
18 A. '22.  
19 Q. You mentioned that you were 100  
20 percent owner in Team Force.  
21 Is that correct?  
22 A. With one shareholder.  
23 Q. One with?  
24 A. With one shareholder.  
25 Q. Who was the shareholder?

1 A. My father.

2 Q. What is your dad's name?

3 A. Michael Jenkins.

4 Q. When was Team Force  
5 incorporated? What year?

6 A. I don't recall. My father did  
7 it originally, '04, '05. Waited a  
8 year, flipped it to my name with  
9 Attorney Bill Garvin, and then I  
10 became the sole owner. I had articles  
11 of incorporation. I actually think I  
12 provided you guys those in discovery.

13 Q. Okay.

14 And you said when you took over  
15 Team Force, it kind of --- and correct  
16 me if I'm wrong. You said that you  
17 really grew the business.

18 Correct?

19 A. Yes.

20 Q. Okay.

21 So, your father started the  
22 business.

23 Correct?

24 A. No.

25 Q. No? Okay.

1 I --- Who started Team Force?

2 ATTORNEY MUST:

3 You said started. I  
4 think he --- he was the one who  
5 incorporated it.

6 BY ATTORNEY LEAKE:

7 Q. Oh, I apologize.  
8 When was Team Force created?

9 A. '05 or '06.

10 Q. Okay.  
11 And what was your father's  
12 involvement in that?

13 A. Just to protect me. Figure out  
14 the right way to be incorporated. He  
15 had a relationship with attorneys and  
16 I --- as I explained earlier, I got a  
17 business partner prior. He wanted to  
18 protect me.

19 Q. Okay.  
20 And what month in 2022 did you  
21 sell Team Force?

22 A. I think I finalized paper in  
23 July, agreement happened in May.

24 Q. While you were on the board of  
25 directors of SVDC, you were owner of

1 Team Force.

2 Correct?

3 A. Yes.

4 Q. Okay.

5 During your tenure as a board  
6 member on SVDC, did Team Force conduct  
7 any business with SVDC?

8 A. No.

9 Q. Okay.

10 So, Team Force was never paid  
11 out of an SVDC's account for any  
12 service?

13 A. No.

14 Q. Okay.

15 And Team Force never created  
16 boat stickers for SVDC?

17 A. No.

18 Q. There was testimony ---  
19 actually, I'll get to the page number  
20 in the paragraph here in a little bit.

21 But were you ever involved in  
22 creating boat sticker for the SVDC?

23 A. Yes.

24 Q. Okay.

25 Explain to me that involvement.



1 A. That was a bid request and that  
2 was from a company --- from HomeTeam  
3 Graphix.

4 Q. Bid request.  
5 HomeTeam Graphix?

6 A. Yes.

7 Q. Where are they located?

8 A. They're in Johnstown now.

9 Q. And explain to me, what was  
10 your involvement with these boat  
11 stickers?

12 A. Involvement with them?

13 Q. Yes.

14 A. Oh, I was --- they were talking  
15 about boat stickers. I said that ---  
16 and actually was part of company, Home  
17 Team, could do those stickers for you.  
18 If you would request bids, we'd be  
19 happy to bid it. If not, then that's -  
20 -- so be it. If we could save the  
21 corporation money, then that's what we  
22 would do.

23 Q. So, this was during --- this  
24 was during the SVDC board meeting.

25 Correct?

1 A. Yeah.

2 Q. Okay.

3 And you were a board member?

4 A. Mm-hmm (yes).

5 Q. Okay.

6 How did this discussion of boat  
7 stickers come up? Let me start with  
8 who brought up the discussion of boat  
9 stickers.

10 A. I don't recall. It could have  
11 been the president. It could have  
12 been Lynnette. It could have been  
13 anyone.

14 Q. Do you remember what meeting  
15 this was?

16 A. No.

17 Q. Okay.

18 Do you recall who was there?

19 A. When we started talking about  
20 stickers or when we approved stickers?

21 Q. When you started talking about  
22 the stickers.

23 A. I don't recall who was all  
24 there.

25 Q. Okay.

1           But you mentioned the president  
2 was there?

3           A.       The president, vice-president.  
4           I don't know. I --- I can't --- I  
5 don't recall.

6                               ATTORNEY MUST:

7                               If you don't know, just  
8 say you don't know.

9                               BY ATTORNEY LEAKE:

10           Q.       Was this during an executive  
11 section, or was this during a public  
12 meeting?

13           A.       Public.

14           Q.       Okay.

15                       So, this would be in the  
16 meeting minutes, if we looked?

17           A.       It should be.

18           Q.       Okay.

19                       And you testified earlier that  
20 you're involved with a company or were  
21 with the HomeTeam Graphix.

22                               Correct?

23           A.       Mm-hmm (yes).

24           Q.       Okay.

25           A.       Yes.

1 Q. So, when this discussion came  
2 about at this meeting, what was your  
3 position with HomeTeam Graphix?

4 A. At the meeting, I don't know if  
5 I actually had a position.

6 Q. Okay.

7 How were you involved with  
8 HomeTeam Graphix then? You testified  
9 earlier you were, that's why I'm  
10 asking.

11 A. Oh, I was a partial owner in  
12 them.

13 Q. Oh, okay.

14 Partial owner.

15 What type of business is  
16 HomeTeam Graphix?

17 A. Graphics.

18 Q. Is it a corporation or an LLC?

19 A. I can't answer that now. I  
20 don't know. I'm not in it.

21 Q. When this boat sticker  
22 discussion was made, do you recall how  
23 the business was formatted?

24 A. It might have been an LLC.  
25 You'd have to ask Danny Flynn.

1 Q. Mr. Jenkins, you were a partial  
2 owner in this business at that time.

3 Correct?

4 A. Yes.

5 Q. And your testimony is you do  
6 not know if the business was an LLC or  
7 a corporation?

8 A. I didn't handle the corporate  
9 records on that part. I had partners  
10 that did.

11 Q. How many owners were there?

12 A. Three.

13 Q. What are their names?

14 A. One was Bill Colosimo.

15 Q. Can you spell his last name,  
16 please?

17 A. C-O-L-O-S-I-M-O. And Rick  
18 Roberts.

19 Q. Where was the principal place  
20 of business of HomeTeam Graphix at  
21 that time?

22 A. Windber.

23 Q. Do you recall their address?

24 A. What was that address there?  
25 I'm drawing a blank what the address

1 was now. I can't remember.

2 Q. That's okay. All right.

3 Well, do you recall what bank  
4 HomeTeam Graphix would have been using  
5 during that timeframe?

6 A. Somerset Trust, probably.

7 Q. Okay.

8 Does HomeTeam Graphix still  
9 exist as a business today if you know?

10 A. Yes.

11 Q. Okay.

12 Are Bill and Rick still the  
13 owners?

14 A. No.

15 Q. Who's the owner now?

16 A. Mark Cressac. I don't know the  
17 spelling of his last name exactly.

18 Q. How did it come about that  
19 you're no longer involved with  
20 HomeTeam Graphix?

21 A. Didn't have the time.

22 Q. Do you recall when you --- did  
23 you --- well, let me step back. Reel  
24 it back.

25 How did you end with HomeTeam

1 Graphix? Did you sell your interest?

2 A. Yeah.

3 Q. Okay.

4 And when was that?

5 A. Two or three years ago.

6 Probably two.

7 Q. Now, going back to the initial  
8 discussion, did you inform the board,  
9 when you talked about HomeTeam Graphix  
10 for the stickers, that you were a  
11 partial owner?

12 A. Yes.

13 Q. So, they knew?

14 A. I Home Team Graphics I believe  
15 I told Joe Piccini at the time, and I  
16 know some of them knew because Joe was  
17 frustrated that they were going to  
18 give problems because I was a partial  
19 owner of it, due to the situation. So  
20 yes, there was board members that  
21 knew.

22 Q. Okay.

23 And what ultimately happened  
24 with these stickers? Did HomeTeam  
25 Graphix do the stickers?

1 A. They did.

2 Q. Okay.

3 And how much did HomeTeam  
4 Graphix charge the SVDC for that?

5 A. I don't recall, but you'd have  
6 to find the records. I don't recall.

7 Q. Was it over \$1,000.00?

8 A. That I don't recall either.

9 Q. And you wouldn't have been  
10 involved with the actual payment.

11 Would that have been the  
12 treasurer at that point then that  
13 would have written the check? Is that  
14 correct?

15 A. Was --- say that again.

16 Q. My question is would the  
17 treasurer have written the check to  
18 HomeTeam Graphix for the stickers? Is  
19 that correct?

20 A. I believe when Matt generates  
21 the checks and people sign them.

22 Q. Okay.

23 Did you receive that payment  
24 yourself?

25 A. It was given to me in an



1 envelope, and I proceeded to give it  
2 to Bill Colosimo.

3 Q. Okay.

4 So, the check was physically  
5 given to you?

6 A. I believe so.

7 Q. Okay.

8 Before you offered to help with  
9 the stickers through HomeTeam Graphix,  
10 did you discuss that subject matter  
11 with Mr. Neel?

12 A. Before I did it?

13 Q. Yes.

14 A. No.

15 Q. Okay.

16 Did you discuss that with Mr.  
17 Cavanaugh?

18 A. I don't see --- no.

19 Q. Okay.

20 THE WITNESS:

21 May I take a minute  
22 break?

23 ATTORNEY LEAKE:

24 Yeah, sure.

25 ---

1 (WHEREUPON, A PAUSE IN THE RECORD WAS  
2 HELD.)

3 ---

4 ATTORNEY LEAKE:

5 Back on the record here.

6 BY ATTORNEY LEAKE:

7 Q. Mr. Jenkins, Mr. Dively, who is  
8 seated next to me is actually the  
9 first named Defendant in this lawsuit.

10 Do you agree?

11 A. Yes.

12 Q. Is there a reason you did not  
13 include him in the discussion of the  
14 bad eggs?

15 ATTORNEY MUST:

16 He did.

17 ATTORNEY LEAKE:

18 He did?

19 ATTORNEY MUST:

20 Oh, I'm sorry. I'm  
21 sorry. My bad. He did not.

22 ATTORNEY LEAKE:

23 Okay.

24 BY ATTORNEY LEAKE:

25 Q. Is Mr. Dively also a bad egg?

1 A. Yes.

2 Q. All right.

3 In looking at your complaint,  
4 is it fair to say that you also filed  
5 suit --- or you partially also filed  
6 suit against Stony Valley Development  
7 Corporation.

8 Correct?

9 ATTORNEY CASCIO:

10 Stonycreek Valley  
11 Development Corporation.

12 BY ATTORNEY LEAKE:

13 Q. Stonycreek Valley Development  
14 Corporation?

15 A. Yeah, and the Stonycreek Valley  
16 Development Corporation. Yes.

17 Q. And looking specifically at  
18 your amended complaint, I'm on page  
19 16, paragraph 119, says, "Other  
20 members of the board of directors  
21 breached their fiduciary duties to the  
22 corporation," and so on, and so on.  
23 You see that paragraph?

24 THE WITNESS:

25 Can I read that

1 paragraph?

2 ATTORNEY MUST:

3 You can.

4 THE WITNESS:

5 Okay.

6 BY ATTORNEY LEAKE:

7 Q. Would some of the other members  
8 that your referred to in paragraph 119  
9 of your amended complaint be those bad  
10 eggs we talked about earlier?

11 A. Yeah.

12 Q. Okay.

13 And you would agree that other  
14 board members acted inappropriately in  
15 2018?

16 A. Yeah.

17 Q. Is there a reason Mr. Dively  
18 was the only board member named in  
19 this lawsuit?

20 A. I don't draft law --- I don't  
21 know. I don't draft this. I don't  
22 know how --- why it was done that way  
23 or which it was done that way.

24 Q. There's three Plaintiffs.

25 Correct?

1 A. Correct.

2 Q. Whose idea out of the three of  
3 you to sue Mr. Dively?

4 A. I don't recall how we reached  
5 that, but I know it was needed.

6 Q. Was there discussion of filing  
7 suit against any other individual  
8 board members?

9 ATTORNEY MUST:

10 You can answer that  
11 unless that discussion included  
12 discussion with Counsel. If it  
13 was just among yourselves, you  
14 can answer that. If it was  
15 with ---

16 THE WITNESS:

17 Can you say the question  
18 again, please?

19 BY ATTORNEY LEAKE:

20 Q. Did you discuss with Mr. Neel  
21 and Mr. Cavanaugh, without any legal  
22 Counsel present, filing suit against  
23 any other party than Daniel Dively and  
24 the SVDC?

25 A. I don't recall. We may have.

1 Don't recall.

2 Q. Can you tell me in your own  
3 words the basis of the lawsuit that  
4 you filed against Mr. Dively?

5 A. In my own words of why we  
6 included Mr. Dively with the lawsuit?

7 I would say that part of it  
8 being lack of transparent. Not being  
9 --- not having a lot of  
10 professionalism during the meetings  
11 that I attend. You know, that it's  
12 actions in between other members,  
13 actions in between myself, threats.  
14 Just --- there's multiple occasions  
15 which led us to be that there was  
16 reasons for Dan to be named in this  
17 suit.

18 Q. Was he sued because he was  
19 self-dealing?

20 A. Well, I believe that, yes, he  
21 was self-dealing and promoting his  
22 business to the best of my knowledge.  
23 I believe if you want to promote ones  
24 business that you should, you know,  
25 make that. I believe that's promotion

1 his own business and self-dealing in  
2 breach of fiduciary duties for  
3 awarding things without bids.

4 Q. Okay.

5 Explain to me what self-dealing  
6 is.

7 A. My interpretation of what ---  
8 why I would say self-dealing --- is  
9 being part of writing scope of work  
10 and being one who would meet  
11 contractors and discuss jobs. I'm not  
12 taking from the fact that he's  
13 knowledgeable. He is, when it comes  
14 to his point of work. And I think he  
15 does important work. But to being  
16 able to draw up the scope of work,  
17 present it to other people that you  
18 are bidding against. I believe that  
19 influences of doing work for other  
20 board members may be at a discounted  
21 rate. Also being awarded bids via an  
22 email approval by one. Just different  
23 things in that. There was a lot of  
24 entrenching and self-dealing and I  
25 believe that people could see it that

1 way. And I see it that way.

2 Q. Is self --- okay. Just to  
3 narrow this down, Mr. Jenkins.

4 Was it the fact that he was on  
5 the board and had a business that was  
6 servicing the Stonycreek Lake  
7 community? Is that part of self-  
8 dealing or not?

9 A. I think being on the board and  
10 serving your community and doing work  
11 for community members, versus doing  
12 for the board --- I believe that you  
13 make that conflict known and well  
14 aware and it was the proper bidding  
15 process, during each one of maybe  
16 those occasions, whether there was or  
17 there wasn't on some of them not. I  
18 can't answer for all of them. I  
19 wasn't a part of all of them. So,  
20 there could be --- there could be  
21 problems there.

22 Q. If Mr. --- or, Mr. Dively or  
23 Dirt Bottom Excavating had never done  
24 work directly for the SVDC, meaning  
25 was never paid by the SVDC, but only



1 did work for members of the community,  
2 would that be self-dealing?

3 ATTORNEY MUST:

4 Object to the extent it  
5 calls for a legal conclusion,  
6 but you can answer the question  
7 outside of the law.

8 ATTORNEY CASCIO:

9 You can answer the  
10 hypothetical.

11 THE WITNEES:

12 I can answer the  
13 hypothetical?

14 Off your question if  
15 you're --- the way you phrased  
16 it to me is almost like he  
17 didn't do work for the SVDC,  
18 unless he did work and donated  
19 it all the time, is maybe when  
20 you were getting at in your  
21 question?

22 ATTORNEY LEAKE:

23 No.

24 THE WITNEES:

25 Or are you saying that

1 he can't be on the board and do  
2 work for the community? He's  
3 on the board. He can do work  
4 for the community, sure.

5 ATTORNEY LEAKE:

6 Okay.

7 THE WITNEES:

8 Was that your question?

9 ATTORNEY LEAKE:

10 Yes. Yes, that's my  
11 question.

12 THE WITNEES:

13 Absolutely, he can.

14 BY ATTORNEY LEAKE:

15 Q. Okay.

16 So --- so, the big issue in the  
17 litigation is not that Mr. Dively or  
18 Dirt Bottom was doing work for the  
19 community. It's that they did work  
20 for SVDC.

21 Is that fair to say?

22 A. Yes.

23 Q. Okay.

24 During the time --- well,  
25 strike that.

1           Mr. Jenkins, can you tell me  
2 specifically when Mr. Dively undercut  
3 bids? I'll start with that.

4           A.       I can't specifically answer for  
5 that.

6           Q.       How many times did he undercut  
7 bids?

8           A.       I can't answer that to the best  
9 of my knowledge of how many times.

10          Q.       Do you agree that the paragraph  
11 in the amended complaint that you just  
12 read specifically references Mr.  
13 Dively undercutting known bids? Would  
14 you agree with that? You can look at  
15 it if you would like.

16          A.       Which one is it again?

17          Q.       Paragraph 119.

18          A.       Okay.

19                 And say the question one more  
20 time then, please.

21          Q.       Do you agree that in that  
22 paragraph, the suit that you are a  
23 part of, specifically alleges Mr.  
24 Dively was undercutting known bids?  
25 Do you agree with me?

1 A. I believe that --- well,  
2 without all the information or --- or  
3 testimony or depositions, I couldn't  
4 answer that to the exact. So, to this  
5 one, I know that there was talk of it.

6 I know there --- when I --- I  
7 wouldn't call under --- I wouldn't  
8 call a board approving a job solely as  
9 one person undercutting. And not  
10 having three bids, I can't call that  
11 undercutting. So, I don't --- I don't  
12 know how else to answer you. Other  
13 than I don't have physical proof of  
14 exact documents. I have not read all  
15 of his information that you presented  
16 yet either.

17 Q. Did you sign that amended  
18 complaint?

19 A. I imagine that I did. Yes.

20 Q. The suit was filed in March of  
21 2019.

22 Is that correct?

23 A. Yes.

24 Q. That was over three years ago.

25 Is that correct?

1 A. Yeah.

2 Q. How much in attorneys' fees  
3 have you accrued so far?

4 THE WITNESS:

5 I'm allowed to answer  
6 that, right?

7 ATTORNEY MUST:

8 You are.

9 THE WITNESS:

10 I believe we're in the  
11 upwards of \$170-ish, \$172.

12 BY ATTORNEY LEAKE:

13 Q. So, you personally expended  
14 \$172,000.000 in attorneys' fees?

15 A. Not personally.

16 Q. I'm asking how much in  
17 attorneys' fees have you expended.

18 A. We split it. We split it  
19 between the Plaintiffs.

20 Q. So, you've done one third of --  
21 - what was the number? \$170?

22 A. No, I've been doing 50/50 with  
23 Mr. Neel for a while now. Lee  
24 contributed in the beginning, and we  
25 have split that bill amongst us in

1 other ways.

2 Q. Okay.

3 A. Between Plaintiffs and our  
4 Attorneys.

5 Q. Have you reviewed the meeting  
6 minutes from SVDC board meetings from  
7 2017 until present?

8 A. All of them?

9 Q. Yes.

10 A. Not all of them

11 Q. Do you have them?

12 A. That, I can't recall either.  
13 If they were emailed --- I might have  
14 an email copy if they were sent in  
15 discovery. If they were all sent in  
16 discovery, then I would say that we  
17 would. But I don't know. I didn't  
18 review all of those myself.

19 Q. Would you agree that in the  
20 past six months, Mr. Dively has  
21 provided somewhere in the range of  
22 10,000 pages of discovery with you ---  
23 in your case?

24 A. I know that Mr. Dively and  
25 yourself have sent two large boxes.

1 Yes.

2 Q. Okay.

3 But to that end, after all  
4 that, you cannot tell me when Mr.  
5 Dively undercut bids.

6 A. I have not read all of that  
7 information. Going off of --- you'll  
8 have another deposition today. Going  
9 off --- other than Mr. Neel's  
10 deposition, going off of --- doing  
11 your scope of work and then presenting  
12 it to other people. Not saying that  
13 he won every one of them or didn't win  
14 any of the --- I don't --- I don't  
15 have that exact information in front  
16 of me.

17 Q. Can you provide one specific  
18 date that Mr. Dively committed any  
19 wrongdoing as his tenure as a board  
20 member of SVDC?

21 A. I don't have any specific date.  
22 You asked me for a specific date.  
23 You didn't ask in regards to Dirt  
24 Bottom.

25 Q. Did Dirt Bottom Excavating ever

1 win any bids to do work for SVDC in  
2 2017 until present? Do you know?

3 A. I don't know without reviewing.

4 Q. You mentioned earlier that  
5 self-dealing has to do with being on  
6 the board, but also promoting your  
7 business.

8 Is that correct?

9 THE WITNESS:

10 What the heck was that?

11 ATTORNEY LEAKE:

12 No clue.

13 ATTORNEY MUST:

14 I think --- I don't  
15 either. I think it's one of those  
16 little ---

17 ATTORNEY LEAKE:

18 Do you want to go off  
19 the record?

20 ATTORNEY MUST:

21 Off the record.

22 ---

23 (WHEREUPON, A PAUSE IN THE RECORD WAS  
24 HELD.)

25 ---



1                    ATTORNEY LEAKE:

2                    Back on the record.

3                    BY ATTORNEY LEAKE:

4                    Q.            Mr. Jenkins, I'll go ahead and  
5                    re ask the question.

6                    Is part of the self-dealing  
7                    being on the board but also promoting  
8                    your own personal business? Is that  
9                    part of self-dealing?

10                   ATTORNEY MUST:

11                   Again, objection to the  
12                   legal side of it, but you can  
13                   answer the question.

14                   THE WITNESS:

15                   Yeah. I'm --- I'm ---  
16                   I'm 50/50 on it, to be honest  
17                   with you. I think if you're on  
18                   a board and you do a good job  
19                   and you want to promote it to  
20                   other people, you know, as in a  
21                   community, and you're well  
22                   known in the community. But  
23                   I'm 50/50 on it.

24                   BY ATTORNEY LEAKE:

25                   Q.            Okay.

1           And if I was to present to you  
2 that Dirt Bottom Excavating and Mr.  
3 Dively was paid and invoiced for doing  
4 work for SVDC and it was in the amount  
5 of \$2,300.00, okay? I'm going to  
6 present that to you shortly.

7           Do you understand that?

8 A.       That you're presenting me ---

9 Q.       Yes.

10 A.      Sure.

11 Q.      And if that, in fact, was the  
12 case, would that be a specific  
13 incidence of Mr. Dively self-dealing?

14 A.      Was it three bids? That's what  
15 I would answer you.

16 Q.      Okay.

17 A.      I'm sorry. I would answer it  
18 only if there was.

19 Q.      Excellent. Thank you.

20           So, it's not that Dirt Bottom  
21 was paid or did work, it's the bidding  
22 process that's at issue.

23           Is that correct?

24 A.      I don't think it's the bidding  
25 process. I think making it notify

1 that there's an actual conflict, a  
2 potential conflict, is the --- is the  
3 purpose of --- could --- think one to  
4 think that they're self-dealing.

5 Q. Okay.

6 So, how do you make the board  
7 aware of a conflict under those  
8 circumstances?

9 A. I believe you tell the board  
10 you have a conflict. You make an  
11 officer known that there's a conflict.

12 You also ensure that you follow the  
13 rules and regs. You provide three  
14 bids so there's never a question of is  
15 there a self-dealing or a conflict.  
16 And I also believe that you should  
17 make that conflict aware --- known on  
18 any state or federal paperwork.

19 Q. Okay.

20 Now, does the conflict arise  
21 from owning the business, being on the  
22 board and doing the work? Is that  
23 where the conflict arises?

24 A. I would --- I would imagine  
25 it's all of them.

1 Q. Okay.

2 So, could one alleviate the  
3 conflict, being on the board and  
4 simply saying I own a business and I'm  
5 going to put in a bid, but I'm also a  
6 board member? Would that alleviate  
7 the conflict?

8 A. If it was done properly. I ---  
9 some people would say yes, that would  
10 alleviate. Some people would say you  
11 shouldn't serve because it a conflict.

12 So, other people could determine that  
13 vote.

14 Q. I'm not asking about other  
15 people. I'm asking your opinion.

16 A. The determine is both.

17 Q. It's what?

18 A. I say both. It could be --- it  
19 could be both.

20 Q. Okay.

21 When you were involved with  
22 HomeTeam Graphix and suggested the  
23 stickers be done by HomeTeam Graphix,  
24 how did you make your conflict aware  
25 to the board at point?

1 A. Joe Piccini, our president.

2 Joseph Piccini, our president.

3 Q. That's your answer? Somebody's  
4 name?

5 A. Our board president, Joe  
6 Piccini.

7 Q. You told him that?

8 A. Absolutely. He was concerned  
9 that wouldn't go through or pass  
10 because of me or it being a conflict.

11 I'm going --- can I continue to  
12 answer on this one please?

13 Q. Yes.

14 A. And I made him aware of that.  
15 When Lynnette solicited the bids, the  
16 bids were sent to Lynnette. They were  
17 enclosed --- enclosed bids. I never  
18 seen any of those bids as a board  
19 member. I believe Lynnette and Joe,  
20 maybe both of them, maybe Brad was  
21 involved at that time --- and I  
22 remember that meeting specifically,  
23 that there was a problem with it. And  
24 I also believe Mr. Meneilly at that  
25 meeting stated that there was three

1 bids and there was substantial  
2 savings. And we're going to allow it.

3 But I made it very clear that I was  
4 part owner of the company. That we  
5 could potentially save money. As long  
6 as there's a sealed bid process, I  
7 would be willing to help. If I could  
8 save the corporation money. So,  
9 that's the process in which I went.

10 Q. Isn't the exact thing that you  
11 just described the reason why you're  
12 suing Daniel Dively?

13 A. No.

14 Q. Okay.

15 ATTORNEY LEAKE:

16 Can I have a moment?

17 THE WITNESS:

18 Sure.

19 ---

20 (WHEREUPON, A PAUSE IN THE RECORD WAS  
21 HELD.)

22 ---

23 ATTORNEY LEAKE:

24 Back on the record.

25 BY ATTORNEY LEAKE:

1 Q. Mr. Jenkins, you had testified  
2 earlier that you made your conflict  
3 aware, with HomeTeam Graphix and the  
4 boat stickers, by telling Joe Piccini.

5 Is that correct?

6 ATTORNEY MUST:

7 Is that a yes?

8 THE WITNESS:

9 Yes.

10 BY ATTORNEY LEAKE:

11 Q. You did not tell Lynnette  
12 first?

13 A. Lynnette knew.

14 Q. How did she know?

15 A. I told her I was an owner of  
16 the company, and it was discussed. I  
17 said we can print stickers. I would  
18 like three bids. I said, "I'll make  
19 Joe aware." She said, "Let me know."  
20 And I said ---and that's when Joe  
21 said, "If you get bids, I want them  
22 sealed," and then Mike's not a part of  
23 any of that portion.

24 Q. So --- so far, we know that  
25 Lynnette knew and Mr. Piccini knew.

1 Correct?

2 A. And I --- correct.

3 Q. Did the rest of the board know  
4 about this conflict?

5 A. I would assume that Mr.  
6 Piccini, our president, would have  
7 discussed that with the rest of the  
8 board.

9 Q. But you don't know that.

10 A. I can't answer that.

11 Q. Okay.

12 Isn't it true that part of the  
13 lawsuit --- you're asking for a  
14 conflict-of-interest policy?

15 A. Absolutely.

16 Q. Do you feel that a conflict of  
17 interest that only notifies the  
18 president and the secretary of a  
19 conflict is sufficient?

20 A. You would think that the  
21 president and the secretary would  
22 notify the rest of the board.

23 Q. So, you just would hope that  
24 happens?

25 A. It should happen. If you can't



1       rely on a president if there was a  
2       potential conflict, then you shouldn't  
3       be the president. That information is  
4       presented to him.

5       Q.       Excellent point.

6                You said the current president  
7       is a bad egg.

8                Correct?

9       A.       Yes.

10       Q.       So, why would your policy rely  
11       on a bad egg to make everyone aware of  
12       something?

13       A.       Maybe he shouldn't be on the  
14       board.

15       Q.       When Mr. Dively was on the  
16       board for Stonycreek Valley  
17       Development Corporation, were you  
18       living at the lake at that point?

19       A.       Yes.

20       Q.       Okay.

21                Did you know that he was a  
22       partial owner of Dirt Bottom  
23       Excavating?

24       A.       Yeah. Everyone knew that he  
25       owned Dirt Bottom.

1 Q. Okay.

2 In fact, there's even a sign in  
3 downtown Shanksville that had Dirt  
4 Bottom Excavating, right?

5 A. Yeah.

6 Q. So, that's like no secret that  
7 Mr. Dively owns Dirt Bottom Excavating  
8 --- or partially.

9 Correct?

10 A. Sure. It's part of the  
11 community. Yeah, he owned it.

12 Q. It's kind of fair to say about  
13 99 percent of the time, other than  
14 today, he wears a Dirt Bottom  
15 Excavating shirt.

16 Correct?

17 A. Yep.

18 Q. So, if Dirt Bottom Excavating -  
19 -- excuse me, strike that.

20 If Mr. Dively, as a board  
21 member, suggested that Dirt Bottom  
22 Excavating do a project, it's fair to  
23 say the board would know his conflict  
24 immediately?

25 ATTORNEY MUST:

1                   Object, I going to point  
2                   out about how he would know  
3                   what the board knows, other  
4                   than the inferences that he  
5                   just made.

6                   ATTORNEY LEAKE:

7                   And my response would  
8                   be, he said everybody knows.

9                   ATTORNEY MUST:

10                  Throughout the  
11                  community.

12                  BY ATTORNEY LEAKE:

13                  Q.           When HomeTeam Graphix did the  
14                  boat stickers, you were not self-  
15                  dealing because it was properly bid,  
16                  and you properly notified the  
17                  president and the secretary.

18                  Correct?

19                  A.           Correct.

20                  Q.           Do you have any evidence that  
21                  Mr. Dively ever bid a project or Dirt  
22                  Bottom Excavating ever bid a project  
23                  without following the same procedure?

24                  A.           So, I'll answer that to the  
25                  best of my knowledge. An email that I

1 read of Jim Bandstra, giving him  
2 approval to do work without more bid  
3 because it was under the threshold.

4 Q. Okay.

5 A. One board member giving  
6 approval. Self-dealing --- still on  
7 self-dealing or conflict?

8 Q. Either or.

9 A. Using the SVDC patrol boat to  
10 take a dock that sold a customer up  
11 the waterway to receive a profit.  
12 Used the self-dealing or conflict to  
13 me.

14 Q. Okay.

15 A. And then, you know, gave the  
16 money back because the conflict was --  
17 - or self-dealing was made aware to  
18 the community. Other references of  
19 knowing that he was part of bid scope  
20 and telling other --- whether he won  
21 it or not, he should have not been a  
22 part of that bid process or scope of  
23 work with other contractors. He could  
24 --- he could have stayed out of that  
25 scope of work, and then bid if he

1 wanted to, properly. Other than that,  
2 I have not personally reviewed the  
3 information, and I thank you for  
4 sending it. For your information,  
5 your discovery. I've personally not  
6 went through that. I've went through  
7 all the others.

8 Q. Okay.

9 During the bidding process for  
10 HomeTeam Graphix, who were the other  
11 companies that were bid out for the  
12 stickers?

13 A. You would have to ask Lynnette  
14 ---

15 Q. You were present during the  
16 deposition of Harry Neel.

17 Correct?

18 A. Yes.

19 Q. Page 53 of the transcript,  
20 specifically. No, I apologize. I'm  
21 getting ahead of myself. Page 75.  
22 Page 74, actually, gentlemen.

23 Mr. Jenkins, do you recall  
24 being here during this Mr. Neel's  
25 depo?

1 A. Yes.

2 Q. And there was much discussion  
3 about these boat stickers.

4 Correct?

5 A. Yes.

6 Q. And isn't it true that Mr. Neel  
7 disagreed with the decision of the  
8 board to allow your company to do the  
9 boat stickers?

10 A. Yes, he did disagree with it.

11 Q. And is it fair to say that his  
12 testimony was that if you're on a non-  
13 profit board, and you own a business,  
14 you should not be doing work and  
15 making money? Is that fair to say?

16 A. That is his answer to it, yes.

17 Q. You disagree with that.

18 Correct? You disagree with  
19 that. Correct?

20 A. Yes. Him and I are allowed to  
21 disagree.

22 Q. Okay.

23 So, you guys disagree with that  
24 point?

25 A. Yes.

1 Q. Thank you.

2 ATTORNEY LEAKE:

3 Now, Mr. Jenkins, I'm  
4 going to hand you what I've  
5 marked as Jenkins Deposition  
6 Exhibit A, through --- A  
7 through E.

8 ---

9 (Whereupon, Jenkins  
10 Exhibit A, Dirt Bottom  
11 Excavating Invoices, was  
12 marked for  
13 identification.)

14 (Whereupon, Jenkins  
15 Exhibit B, Deposition of  
16 John Weir, was marked  
17 for identification.)

18 (Whereupon, Jenkins  
19 Exhibit C, Deposition of  
20 James Bandstra, was  
21 marked for  
22 identification.)

23 (Whereupon, Jenkins  
24 Exhibit D, Deposition of  
25 Lawrence Rosage, was

1 marked for  
2 identification.)  
3 (Whereupon, Jenkins  
4 Exhibit E, Deposition of  
5 Derrick St. Clair, was  
6 marked for  
7 identification.)

8 ---

9 ATTORNEY LEAKE:

10 I'm going to everybody  
11 copies of that.

12 ATTORNEY CASCIO:

13 I have these memorized.

14 ATTORNEY LEAKE:

15 And, Mr. Jenkins, since  
16 you've been here throughout all  
17 these depositions ---

18 THE WITNESS:

19 I'm sorry ---

20 ATTORNEY MUST:

21 It's ---

22 THE WITNESS:

23 Oh.

24 BY ATTORNEY LEAKE:

25 Q. Since you've been here for all



1 these depositions, are you familiar at  
2 all with this exhibit?

3 A. I believe I've seen this  
4 before. This page here, that I'm  
5 looking at.

6 Q. And pointing specifically to  
7 Exhibit A, noted on the front is  
8 basically five attachments to Exhibit  
9 A.

10 Do you see that?

11 A. Yes.

12 Q. And if you review those  
13 attachments, I will assert that these  
14 are invoices that Dirt Bottom  
15 Excavating or Daniel Dively has  
16 provided to you in discovery.

17 You understand that that's what  
18 I'm asserting?

19 A. Yes, sir.

20 Q. Okay.

21 Do you recall receiving these  
22 invoices in discovery?

23 A. I believe that John Paul has  
24 showed us these at one point, I do  
25 believe.

1 Q. Okay.

2 A. I didn't look --- open your  
3 stuff but do believe I've seen these.

4 Q. Okay.

5 And do you understand that Mr.  
6 Dively is asserting, as well as Dirt  
7 Bottom Excavating, that Exhibit A is  
8 all the documented times that Dirt  
9 Bottom Excavating did work SVDC from  
10 April 17th, 2017, until October 13th,  
11 2020.

12 Do you understand that's what  
13 Mr. Dively's asserting?

14 A. That's what he's asserting.

15 Q. Okay.

16 Do you have any reason to  
17 believe that that is incorrect?

18 A. I would answer yes. Only if  
19 you're asserting Dirt Bottom or Dan  
20 Dively himself, who's donating the  
21 time. Would it always be Dirt Bottom  
22 or sometimes is it Dan? You  
23 understand what I'm saying? I don't  
24 mean to question you. I just want to  
25 answer you properly.

1 Q. So, you want me to clarify.

2 During this timeframe, Dively  
3 and Dirt Bottom Excavating --- do you  
4 understand he was a partial owner in  
5 Dirt Bottom Excavating? Do you  
6 understand that?

7 A. I would assume that he was an  
8 owner of Dirt Bottom. Without seeing  
9 corporate records, I wouldn't be able  
10 to answer that. But I classify Dan  
11 Dively as being Dirt Bottom  
12 Excavating.

13 Q. Okay.

14 So, do you have any reason to  
15 believe that Daniel Dively, as an  
16 individual, did not donate and also  
17 was not paid in what's reflected in  
18 Exhibit A? You can look at Exhibit A  
19 if you need to.

20 ATTORNEY MUST:

21 So, is your question  
22 just if he has any reason to  
23 disagree with these?

24 BY ATTORNEY LEAKE:

25 Q. Yeah.

1           Do you have any reason to  
2 disagree with Exhibit A? Maybe that's  
3 a better way to ask it.

4           ATTORNEY MUST:

5           You may, in fact,  
6 disagree.

7           THE WITNESS:

8           I'm trying not to give  
9 like these big, long answers,  
10 but ---

11          ATTORNEY LEAKE:

12          That's all right.

13          THE WITNESS:

14          I know there was other  
15 donations that Mr. Dively has  
16 done.

17          ATTORNEY MUST:

18          No, his question is do  
19 you have any reason to disagree  
20 with Exhibit A?

21          ATTORNEY LEAKE:

22          No.

23          ATTORNEY MUST:

24          --- I'm sure.

25          THE WITNESS:

1                   If that's what you  
2                   provided, then no.

3           BY ATTORNEY LEAKE:

4           Q.       Thank you.

5                   But you did mention, Mr.  
6           Jenkins, that Mr. Dively may have  
7           donated more than this 3,200 figure of  
8           services.

9                   Is that fair to say?

10          A.       I believe that he did.

11          Q.       Okay.

12                   And in fact, I will represent  
13          to you, Mr. Jenkins, that through  
14          discovery, we did recognize through a  
15          QuickBooks entry on April 17th, 2017,  
16          there may have been a what was called  
17          shoreline stabilization done by Dirt  
18          Bottom Excavating. And that may have  
19          been paid in that relevant timeframe.

20                   Do you understand that I'm  
21          asserting that?

22          A.       Yes.

23          Q.       Okay.

24                   That came up in discovery  
25          recently and I want to be transparent,

1 in that would be something in addition  
2 to Exhibit A.

3 ATTORNEY MUST:

4 Wait a minute, is  
5 Exhibit A, are --- are counted  
6 as donations?

7 ATTORNEY LEAKE:

8 Donations and an  
9 invoice.

10 THE WITNESS:

11 It says invoices  
12 submitted by Dively or Dirt  
13 Bottom, but it doesn't say ---  
14 it says donations total in  
15 relevant time period.

16 ATTORNEY LEAKE:

17 Correct.

18 THE WITNESS:

19 Only in that time  
20 period, he thinks there's  
21 another one.

22 ATTORNEY LEAKE:

23 There was another ---  
24 there may have been another one  
25 that wouldn't be represented in

1 the \$4,000.00, but it's unclear  
2 at this point. It's a  
3 QuickBooks entry, but we don't  
4 have an invoice.

5 ATTORNEY MUST:

6 I see. I understand.

7 ATTORNEY LEAKE:

8 Full transparency, that  
9 may not be an exhaustive list.

10 ATTORNEY MUST:

11 I got you.

12 ATTORNEY LEAKE:

13 When it comes to that  
14 one specific line item, which  
15 is in a QuickBooks entry in  
16 this discovery schedule.

17 ATTORNEY CASCIO:

18 John, are you reserving  
19 the right to --- at trial?

20 ATTORNEY LEAKE:

21 I just think that it's  
22 important fact, but I'll be  
23 transparent. So, I wouldn't --  
24 - I would just leave it at  
25 that.

1 BY ATTORNEY LEAKE:

2 Q. And I know this is circular,  
3 Mr. Jenkins, and I know that you've  
4 answered. But aside from the  
5 \$2,300.00 invoice as attachment five,  
6 and possibly the \$4,000.00 invoice  
7 that might have been back in April of  
8 '17, before you were involved, is  
9 there any other times that you know  
10 Mr. Dively was paid for work he did  
11 SVDC from 2017 until present? Are you  
12 aware of any other times?

13 A. Without fully looking at all of  
14 the discovery, not on your side, the  
15 other side. I'm almost finished, and  
16 our attorneys are working. Amounts  
17 aren't adding up to me. Not based on  
18 your knowledge, based on what our past  
19 president has told us. But what you  
20 have asserted and provided, it's seems  
21 like you're being transparent and  
22 their timeline, the money's not  
23 matching up, so.

24 Q. The money's not matching up?

25 A. From what I was --- we were



1 told by other board members. Like  
2 Larry Rosage saying we've only paid  
3 only Dan \$2,300.00. It's not equaling  
4 up. Dan's --- you can actually  
5 produce, so no. That's all I know.

6 Q. Okay.

7 In discovery, isn't it true  
8 that you received QuickBooks records  
9 from the SVDC dating back all the way  
10 to 2015? Is that true? If you don't  
11 know, say you don't know.

12 A. We received discovery. I don't  
13 know.

14 Q. Now, the amount paid there on  
15 attachment number five, the \$2,300.00,  
16 if we can just turn to that. I see  
17 that it says removal of three stumps  
18 and one telephone pole. I do  
19 apologize for the terrible copy job.

20 A. It's okay.

21 Q. I will represent to you that  
22 that's what that says.

23 Do you understand that's the  
24 invoice, the substance of it?

25 A. Yes.

1 Q. Do you have any reason to  
2 believe that \$2,300.00 number is above  
3 fair market value for that work?

4 A. Sir, I'm not an excavator. So  
5 no, I don't know.

6 Q. Don't know? Okay.

7 That's fine.

8 Are you aware of any time that  
9 Mr. Dively ever did work for SVDC and  
10 was paid over fair market value for  
11 his work?

12 A. I can't answer that.

13 Q. Okay.

14 What about Dirt Bottom  
15 Excavating? Same question. Did Dirt  
16 Bottom Excavating ever do work for the  
17 SVDC and was paid over fair market  
18 value?

19 A. I can't answer that either.

20 Q. Why can't you answer it?

21 A. Without seeing competitive  
22 bids.

23 Q. It ---

24 A. I don't know the market.

25 Q. I don't want to put words in

1 anybody's --- but is that --- that you  
2 don't know? I'm just trying to ---  
3 Because when you say I can't answer,  
4 that might imply privilege or  
5 something like that, so.

6 ATTORNEY MUST:

7 No, I don't --- It's not  
8 --- it's not privilege. I  
9 think what he's saying is  
10 without seeing competitive  
11 bids, I can't give you an  
12 opinion based upon his own  
13 personal knowledge.

14 ATTORNEY LEAKE:

15 Okay.

16 THE WITNESS:

17 That's what I'm saying.

18 BY ATTORNEY LEAKE:

19 Q. That you don't have enough  
20 information?

21 A. I'm --- I don't have enough  
22 information or knowledge of that scope  
23 of work or his work to answer that  
24 question.

25 Q. Understood. Okay.

1           Has anybody, in your knowledge,  
2           ever suggested that Mr. Dively was  
3           paid for work that he did for SVDC  
4           over fair market value?

5           A.       Say it one more time. I'm  
6           sorry.

7           Q.       No problem.

8           Has anybody ever told you that  
9           they have information or believe that  
10          Mr. Dively did work for Stonycreek  
11          Valley Development Corporation and was  
12          paid over fair market value for the  
13          work he performed?

14          A.       No.

15          Q.       The same question, but relative  
16          to Dirt Bottom Excavating.

17          Has anybody ever told you or  
18          provided you with information that  
19          would indicate that Dirt Bottom  
20          Excavating has ever done services or  
21          work for Stonycreek Valley Development  
22          Corporation for over fair market  
23          value?

24          A.       Okay.

25                 I'm going to ask you to maybe

1 rephrase ---

2 ATTORNEY MUST:

3 It's the same question.

4 THE WITNESS:

5 No, I know. But where  
6 I'm stuck is --- are you  
7 referencing Dan Dively or Dirt  
8 Bottom? When you say Dan, are  
9 you --- is it both? Because he  
10 has done donations personally.  
11 So, I'm ---

12 ATTORNEY LEAKE:

13 Oh. I'll clarify.

14 BY ATTORNEY LEAKE:

15 Q. So, the first question I asked  
16 you that you said that you hadn't  
17 received information, that was  
18 specific to Mr. Dively. This question  
19 is specific to Dirt Bottom Excavation.

20 So, I'm asking have you ever  
21 been told or obtained information that  
22 would indicate Dirt Bottom Excavating  
23 Corporation ever did work for SVDC and  
24 was paid over fair market value?

25 A. No, but on the last question, I

1 would question on personal because  
2 amount of donations with no records.

3 Q. Okay.

4 All right.

5 And if I could point you to  
6 what we've marked as ---

7 ATTORNEY LEAKE:

8 And actually, going  
9 back, housekeeping, obviously,  
10 I want to submit for deposition  
11 purposes, Exhibit A, Jenkins  
12 Deposition Exhibit A.

13 THE WITNESS:

14 David, am I done with  
15 this?

16 ATTORNEY MUST:

17 No, he's ---

18 ATTORNEY LEAKE:

19 You can keep it.

20 ATTORNEY MUST:

21 No, he wanted them.

22 ATTORNEY LEAKE:

23 I know. He's moving onto

24 --- sorry.

25 BY ATTORNEY LEAKE:

1 Q. Mr. Jenkins, you were present  
2 during the deposition of John Weir.

3 Correct?

4 A. Yes.

5 Q. And do you recall John Weir  
6 spoke about the work that Mr. Dively  
7 had done for SVDC?

8 A. Absolutely.

9 Q. And do you recall Mr. Weir  
10 specifically estimating that Mr.  
11 Dively had donated between \$15,000.00  
12 to \$20,000.00 of work to SVDC?

13 A. Him or Dirt Bottom?

14 Q. Okay.

15 No problem.

16 A. No, I asked you. Him or Dirt  
17 Bottom?

18 Q. Mr. Dively.

19 A. I can't answer ---

20 Q. Specific --- if you'd like to  
21 take a look at Exhibit B, paragraph 24  
22 to refresh your recollection?

23 ATTORNEY MUST:

24 So, his question is did  
25 Mr. Weir testify to that. Not

1           whether you agree or disagree,  
2           but Mr. Weir testify. That's  
3           his question.

4                           THE WITNESS:

5                           He did testify to that.

6                           Yes, sorry.

7                           BY ATTORNEY LEAKE:

8           Q.           Okay.

9                           And the next page too had some  
10           elements. So, the answer was yes, he  
11           did testify to it.

12                          Do you have any reason to  
13           believe that that's inaccurate?

14           A.           Yes.

15           Q.           Okay.

16                          What do you believe is  
17           inaccurate about it?

18           A.           I believe that some of the ---  
19           I believe that Dan did provide  
20           services and good services. I believe  
21           that some of the numbers were  
22           inflated.

23           Q.           Okay.

24           A.           And they were sent to the  
25           community inflated.



1 Q. Okay.

2 A. But Dan did provide work and I  
3 don't know that exact value without my  
4 request of that paperwork.

5 Q. Okay.

6 So, you think the \$15,000.00 to  
7 \$20,000.00 estimate is inflated.

8 Correct?

9 A. Without what I've asked for, I  
10 believe it is.

11 Q. Okay.

12 What number do you think is  
13 appropriate that would not be  
14 inflated?

15 A. Cannot answer that without  
16 proper requests that I've asked for.

17 Q. Okay.

18 And is it true that Mr. Weir  
19 testified that that \$2,300.00 figure  
20 on Exhibit A, attachment five --- that  
21 \$2,300.00 figure, quote "might have  
22 covered his fuel."

23 Do you agree that Mr. Weir  
24 testified to that?

25 A. He did testify to that.

1 Q. Do you have any reason to  
2 believe that's an inaccurate statement  
3 by Mr. Weir?

4 A. I'm not in that profession, so  
5 I would say without the proper  
6 information or receipts, I don't have  
7 an answer to that. I'm not in that --  
8 - I don't know how much it costs to  
9 haul equipment. I can't answer that.

10 Q. All right.

11 So, moving on to Exhibit C.  
12 Mr. Jenkins, you were present during  
13 the deposition of James Bandstra.

14 Correct?

15 A. Yes, sir.

16 Q. Okay.

17 And looking at the first page,  
18 in the middle there.

19 Is it true that Mr. Bandstra  
20 testified that anytime Mr. Dively and  
21 Dirt Bottom Excavating did work for  
22 SVDC, it was always under fair market  
23 value? Is that true?

24 A. If that's what he testified,  
25 then that's what he testified. Yes.

1 Q. Do you have any belief ---  
2 reason to believe that incorrect?

3 A. I would say it would be  
4 incorrect because neither Bandstra or  
5 myself would have that knowledge to  
6 analysis --- to what he would spend or  
7 what it would cost something, nor the  
8 records to prove.

9 Q. Okay.

10 Moving on to ---

11 ATTORNEY LEAKE:

12 And I would submit for  
13 the deposition purposes, B and  
14 C, obviously.

15 BY ATTORNEY LEAKE:

16 Q. Moving onto Exhibit D. The  
17 deposition of Lawrence Rosage.

18 Were you present for that  
19 deposition, Mr. Jenkins?

20 A. I was.

21 Q. Okay.

22 And during that deposition,  
23 isn't it true that Mr. Rosage said  
24 that Exhibit A was an accurate  
25 illustration of the work done by Mr.

1 Dively or Dirt Bottom Excavating? Is  
2 that true?

3 ATTORNEY MUST:

4 I'm sorry, where --- I'm  
5 a little uncomfortable with you  
6 just generally characterizing  
7 it.

8 ATTORNEY LEAKE:

9 Okay.

10 ATTORNEY MUST:

11 I mean, obviously it  
12 says what it says.

13 THE WITNESS:

14 Are you asking me if  
15 that's what Larry said?

16 BY ATTORNEY LEAKE:

17 Q. Yeah. That's all --- I'm not  
18 asking you to characterize it.

19 I'm just asking are you aware  
20 that it was said? That's all.

21 A. If that's what ---

22 ATTORNEY MUST:

23 And --- I'm sorry. What  
24 --- can you just point us to  
25 where?

1                   THE WITNESS:

2                   I think you're in the  
3 highlighted stuff, right?

4                   ATTORNEY LEAKE:

5                   So, Exhibit D, paragraph  
6 20, reads, "Now, moving back to  
7 group A, I'm going to represent  
8 to you that is a group of  
9 documents with a cover sheet,  
10 referring to document,  
11 specifically invoices supplied  
12 by Dirt Bottom Excavating to  
13 the Corporation. So, let me  
14 ask you, Larry, and you look  
15 through those for me. When you  
16 were the president, do you  
17 recall if you saw these  
18 documents? Yes." And then, the  
19 document goes on, and on page  
20 177, paragraph 1 --- paragraph  
21 16, the question was asked, "Do  
22 you have any reason to believe  
23 that that is incorrect? No."  
24 And then I ask about the  
25 \$2,300.00 number. "Do you have

1 any reason to believe that's  
2 incorrect? No."

3 So, I guess, I'm jumping  
4 the gun a little bit.

5 THE WITNESS:

6 So, your first question  
7 was to ask me was I present and  
8 did Larry say this?

9 ATTORNEY LEAKE:

10 Yes.

11 THE WITNESS:

12 I was present and Larry  
13 said this.

14 BY ATTORNEY LEAKE:

15 Q. Do you have any reason to  
16 believe that Larry was incorrect in  
17 his deposition?

18 A. I can't answer that without all  
19 the discovery. That I've seen for  
20 myself. I can't answer that.

21 Q. Okay.

22 All right.

23 Moving lastly to Jenkins  
24 Exhibit E, which is an excerpt from  
25 deposition of Derrick St. Clair.

1 A. Mm-hmm (yes).

2 Q. Mr. Jenkins, were present  
3 during that deposition?

4 A. I was.

5 Q. Now, I want you to take a  
6 moment to review this, but ---

7 A. Is there a certain part or you  
8 want to read the whole thing?

9 Q. So, specifically, I'll just go  
10 ahead and start on page 128, paragraph  
11 23. There's testimony.

12 The question that I asked was,  
13 "Now, moving on, we have on group  
14 Exhibit A, one invoice paid in the  
15 relevant time period. And again,  
16 we're talking about April 17th, 2017,  
17 until October 13th, 2020, time period.

18 Is there any reason for you to  
19 believe, that that figure is  
20 inaccurate?" And Mr. St. Clair  
21 answers, "No, I do remember seeing  
22 that number in QuickBooks."

23 So, do you agree that that was  
24 his testimony?

25 A. Yes.

1 Q. Do you have any reason to  
2 believe that he was not being truthful  
3 in that in testimony?

4 A. Without seeing documents, I  
5 guess not. I mean, he was given under  
6 oath.

7 Q. And moving to the very last  
8 page of Exhibit E. The highlighted  
9 portion has to do with if Mr. St.  
10 Clair ever recalls Mr. Dively or Dirt  
11 Bottom Excavating doing work for SVDC  
12 for over fair market value, and he  
13 says he did not recall that.

14 Do you agree that that was his  
15 testimony?

16 A. That's what it says.

17 Q. Do you have any reason to  
18 believe that he was being untruthful  
19 there?

20 A. Without records or knowledge or  
21 seeing it, then no, I can't disagree -  
22 -- I'm not doing to agree with him. I  
23 just --- I don't have that knowledge.

24 Q. So, Mr. Jenkins, having the  
25 financial records of SVDC, having



1 subpoenaed the banks of SVDC, and  
2 having an under-oath deposition of the  
3 treasurer from SVDC, your response is  
4 to continue to not be able to answer  
5 these questions.

6 Correct?

7 A. Want a yes or no, or can I  
8 explain?

9 Q. I want a yes or no.

10 ATTORNEY MUST:

11 You can explain.

12 THE WITNESS:

13 Say it one more time,  
14 please.

15 BY ATTORNEY LEAKE:

16 Q. My question is what more do you  
17 need to answer these questions?

18 A. Okay.

19 So, now I'm explaining. So, I  
20 didn't get the yes or no because you  
21 changed the question. So, when I say  
22 the information, I, as a shareholder,  
23 requested other information. There  
24 was donations that were publicly  
25 posted in the minutes. Again, not

1 saying that your client did not donate  
2 his time or anything. I believe the  
3 numbers were inflated. I've asked  
4 officers of the corporation and Dan  
5 himself for more knowledge of the fact  
6 or an explanation of those donations,  
7 and not receiving that knowledge of  
8 his hundred hours on the weed or  
9 hundred hours on the patrol boat,  
10 \$20,000.00 or \$20.00 an hour, at 100  
11 hours. All that stuff. I'm not  
12 saying that your client did not  
13 donate, or he has a good heart.

14 Q. Okay.

15 A. I do not have the information  
16 to tell you whether all of that is  
17 correct or not, or if anything was  
18 inflated. I believe some of the  
19 numbers of that donation was inflated.  
20 As true invoice copies, I can't argue  
21 with a true invoice. And again, back  
22 to your question, I do believe that  
23 there was other amounts that were said  
24 and maybe I haven't seen them in the  
25 records yet.

1 Q. So, it is a matter of waiting  
2 for more documentation, perhaps, to be  
3 able to answer these questions?

4 A. Absolutely.

5 Q. Okay.

6 How many depositions have we  
7 had in this case?

8 A. Oh, I --- I mean, it'll be us  
9 three today, and a group full of  
10 people on that side. But you know,  
11 you asked that questions is --- do I  
12 need more information? To be honest  
13 with you, sir, you have provided ---  
14 and I thank you --- you and your  
15 client for that. There is so much  
16 others that we have not gotten. There  
17 has been four board members that have  
18 provided, and one non-board member  
19 currently that has provided. We have  
20 not been fulfilled for me to do my due  
21 diligence or read all of the  
22 information for giving you an honest  
23 answer today. I do believe that you  
24 followed your order at whatever date,  
25 may not have been when the judge

1 ordered it, but I'm waiting and still  
2 waiting for all the information that  
3 we have not gotten due to the judge's  
4 order in '21.

5 Q. Okay.

6 THE WITNESS:

7 Before your question,  
8 can I have a short break?

9 ATTORNEY MUST:

10 Yes. Do you need --- Or  
11 how close are you?

12 ATTORNEY LEAKE:

13 Very close. Probably  
14 five, ten minutes.

15 THE WITNESS:

16 Can I have two minutes  
17 and come right back in? You  
18 okay with that? Thank you.

19 ---

20 (WHEREUPON, A PAUSE IN THE RECORD WAS  
21 HELD.)

22 ---

23 ATTORNEY LEAKE:

24 Back on the record here.

25 Now, Mr. Jenkins, I did

1 want to touch back on that one  
2 thing that we talked, and  
3 that's specifically what relief  
4 you're asking for from the  
5 courts. So, if I could turn  
6 your attention to your amended  
7 complaint. And specifically,  
8 paragraph 22, the prayer for  
9 relief.

10 ATTORNEY MUST:

11 It's page 22.

12 ATTORNEY LEAKE:

13 Yes, page 22.

14 THE WITNESS:

15 Oh, there we go.

16 ATTORNEY MUST:

17 Well, this is the  
18 amended complaint. We have a  
19 lawsuit but ---

20 THE WITNESS:

21 Yeah.

22 ATTORNEY MUST:

23 This is the prayer for  
24 relief.

25 THE WITNESS:

1                   Yeah, yeah. Okay.

2                   ATTORNEY MUST:

3                   He wants to ask you some  
4                   questions about that.

5                   THE WITNESS:

6                   Okay.

7                   I'm sorry. Now I  
8                   understand.

9                   BY ATTORNEY LEAKE:

10                  Q.           Yeah, and Mr. Jenkins, if you  
11                  turn to page 23, under the prayer for  
12                  relief, paragraph three specifically  
13                  reads that one of the things the  
14                  Plaintiffs are asking for is that  
15                  court enter an order nullifying the  
16                  May 24th, 2019, vote of the board of  
17                  directors and order a new vote to be  
18                  taken with the voting rules in effect  
19                  as of May 24th, 2019.

20                  Did I read that correct?

21                  A.           Yes.

22                  Q.           And if that was granted, isn't  
23                  it true that the voting system would  
24                  return to the shares vote and not one  
25                  lot, one vote?

1 A. Yes.

2 Q. Okay.

3 Are you still asking for that  
4 relief in paragraph three or has that  
5 changed?

6 A. I believe my answer earlier was  
7 upon evidence, law, and the court's  
8 findings that it could go back to  
9 that. I don't know what else you  
10 want. What do you want me --- ask me  
11 another --- I don't know.

12 ATTORNEY MUST:

13 He's answered it. The  
14 way I understood it is his  
15 answer is yes.

16 ATTORNEY LEAKE:

17 Okay.

18 THE WITNESS:

19 I'm sorry.

20 ATTORNEY MUST:

21 We are stipulating that.  
22 We swear we're being nice.  
23 We'll stipulate to that.

24 THE WITNESS:

25 Yes. My answer is yes.

1 BY ATTORNEY LEAKE:

2 Q. Okay.

3 All right.

4 How would going back to that  
5 voting system be good for the  
6 community?

7 A. That --- see, I agreed with you  
8 earlier. I'm not going to lie. I  
9 believe that one lot, one vote was the  
10 way --- what we needed to get to.

11 Q. Okay.

12 A. But going back to this, if it  
13 was put back to this, would be based  
14 on the misconduct, the fiduciary duty,  
15 and the law and court's order.

16 Q. Okay.

17 Now, I believe your testimony  
18 that you filed this suit partially to  
19 try to --- for the good of the  
20 community, to right a wrong.

21 Is that correct?

22 A. Derivative action and my  
23 knowledge is to try to protect the  
24 community.

25 Q. Okay.



1 All right.

2 And obviously, we've beaten a  
3 dead horse here with the one lot, one  
4 vote. I think you and I agree that  
5 the one lot, one vote is good for the  
6 community.

7 Correct?

8 A. Sure.

9 Q. Okay.

10 A. Yes.

11 Q. All right.

12 And also, getting these bad  
13 eggs either removed from the board or  
14 starting to follow the rules, that's  
15 good for the community.

16 Correct?

17 A. That would be great for the  
18 community.

19 Q. Okay.

20 All right.

21 Is the good of the community  
22 the only motivation in your lawsuit,  
23 or is there any other motivations?

24 A. I believe my lawsuit is written  
25 and prepared well. I believe that

1 this case was ---

2 ATTORNEY MUST:

3 Well, just --- just  
4 answer his question. His  
5 question is your lawsuit  
6 seeking --- is your motivation  
7 for the lawsuit --- I think he  
8 questioned the good of the  
9 community over something else  
10 besides the good of the  
11 community that you are seeking?

12 THE WITNESS:

13 The community.

14 BY ATTORNEY LEAKE:

15 Q. Okay.

16 Understood.

17 Paragraph five says that you're  
18 asking the court to award Plaintiffs  
19 damages in the amount to be determined  
20 at trial.

21 Is that correct?

22 A. That's what it states.

23 Q. Okay.

24 How much money in damages are  
25 you asking the court?

1 A. I haven't asked the court for  
2 anything. We went through a  
3 settlement agreement, and that's what  
4 we've asked for so far.

5 Q. At trial, what amount of  
6 damages are you asking for?

7 A. I can't answer that.

8 Q. Maybe I'll be more specific.  
9 How much money worth of damages are  
10 you asking Dirt Bottom Excavating to  
11 pay?

12 A. Me, personally? Or my  
13 Attorneys' fees?

14 ATTORNEY MUST:

15 He's asking you --- he's  
16 not asking about attorneys'  
17 fee. He's asking about you  
18 personally and if you've  
19 calculated that, then you have  
20 to tell them. If you haven't  
21 calculated it ---

22 THE WITNESS:

23 I have not calculated  
24 anything.

25 BY ATTORNEY LEAKE:

1 Q. Okay.

2 Have --- do you know how much  
3 money in damages you're asking Daniel  
4 Dively to pay individually?

5 A. I have not calculated anything.

6 Q. Is there an amount that you  
7 feel is appropriate that Mr. Dively  
8 pay in damages?

9 A. I can't talk to that without  
10 speaking to all my parties and I have  
11 not calculated anything.

12 Q. Okay.  
13 Now paragraph six states that  
14 you're asking the court to award  
15 attorneys' fees, costs, and other  
16 expenses.

17 Correct?

18 A. That is what it states, yes.

19 Q. Okay.

20 Who are you asking for those,  
21 those things? Would it Mr. Dively and  
22 SVDC?

23 A. I don't know how that works.  
24 We had a settlement conference.

25 Q. I'm not asking about

1 settlement, Mr. Jenkins. I'm saying  
2 you're requesting things from the  
3 court.

4 And I'm asking what are you  
5 going to be requesting at trial? Are  
6 you requesting Mr. Dively pay  
7 attorneys' fees for you?

8 A. Oh, I --- I don't know how that  
9 works. I would imagine a jury will  
10 decide or the judge would. I don't  
11 know how it works.

12 Q. Okay.

13 If you were to ask the jury,  
14 who would you be asking the jury to  
15 pay your Attorneys' fees, Mr. Dively  
16 or SVDC?

17 A. The named parties in the case  
18 is what I would answer.

19 Q. So, Mr. Dively and SVDC.

20 Correct?

21 A. They're named in the case.

22 Q. Okay.

23 How is SVDC, which is funded by  
24 your neighbors and community members,  
25 paying your Attorneys' fees good for

1 the community?

2 A. I would answer that breach of  
3 fiduciary duties, the rule, the bylaws  
4 and everything that has happened has  
5 not been good for the community. And  
6 I believe that this lawsuit would have  
7 never happened if the board would have  
8 done what was proper to our bylaws and  
9 rules. And I believe that they're at  
10 fault for damaging the community.

11 Q. Okay.

12 You were at the board meeting  
13 last night for SVDC.

14 Correct?

15 A. Yes, sir.

16 Q. Are you aware that the board is  
17 having problems now obtain DNO policy  
18 insurance?

19 A. Absolutely, I'm aware. I've  
20 known for a long that something like  
21 that is going to happen.

22 Q. And isn't it true that the  
23 premium has now risen?

24 A. Sure.

25 Q. Is that good for the community?

1 A. I believe that there's members  
2 in the community that will serve  
3 without DNO, so I don't think it needs  
4 to be paid. That would be bad for the  
5 community.

6 Q. Are you asking the court in  
7 your lawsuit to actually remove any  
8 board members that are currently  
9 sitting right now?

10 A. Say that one more time?

11 Q. Are you asking for the removal  
12 of board members?

13 A. During the settlement  
14 conference, I can't speak to that.  
15 I'm not sure --- I would think with  
16 the actions and things and  
17 transparency, that currently, right  
18 now, that there should be some people  
19 removed. So, yeah, I would ask for  
20 it.

21 Q. Would that be those bad eggs we  
22 talked about?

23 A. Yes.

24 ATTORNEY LEAKE:

25 No further questions.

1                   ATTORNEY CASCIO:

2                   If I may, I just had a  
3                   couple follow up questions.  
4                   This will just take a moment.

5                   When you made reference  
6                   throughout the --- your  
7                   deposition this morning to  
8                   requesting information ---

9                   THE WITNESS:

10                   Yep.

11                   ---

12                   RE CROSS EXAMINATION

13                   ---

14                   BY ATTORNEY CASCIO:

15                   Q.           What form were the requests  
16                   made in?   What --- how did you request  
17                   them?

18                   A.           My requests were all emailed.  
19                   I followed up verbally at a meeting.  
20                   I would do first request, second  
21                   request.   All of my requests of  
22                   information are documented and  
23                   provided to you guys in discovery or  
24                   was done through email, and you're  
25                   welcome to them, if I didn't give them



1 to you. Which you should have.

2 Q. Did you ever submit a written,  
3 verified demand under the applicable  
4 section of the Pennsylvania statutes?

5 A. I had an attorney, Dennis  
6 McGlynn, ask for stuff. I don't know  
7 how that went down with him and  
8 Person. And I provided letters before  
9 the lawsuit. I believe Mets Lewis  
10 wrote us one, requesting information,  
11 and it wasn't provided either.

12 Q. And, has that been provided?  
13 What did you say has been provided?  
14 That request?

15 A. I'm sorry, you're ---

16 Q. Was that request --- did you  
17 provide us a copy that request in  
18 discovery?

19 A. Absolutely.

20 ATTORNEY CASCIO:

21 We'll reserve the rest  
22 of that question after another  
23 review. So, done with that.  
24 Thank you.

25 ATTORNEY MUST:

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Thank you.

COURT REPORTER:

Send it to where?

ATTORNEY MUST:

I'm sorry?

COURT REPORTER:

Send it to who?

ATTORNEY MUST:

Me.

\* \* \* \* \*

DEPOSITION CONCLUDED AT 11:51 A.M.

\* \* \* \* \*

1 COMMONWEALTH OF PENNSYLVANIA )

2 COUNTY OF CAMBRIA )

3 CERTIFICATE

4 I, Michael G. Sargent, a Notary Public  
5 in and for the Commonwealth of Pennsylvania, do  
6 hereby certify:

7 That the witness, Michael Jenkins, whose  
8 testimony appears in the foregoing deposition, was  
9 duly sworn by me on November 18, 2022 and that the  
10 transcribed deposition of said witness is a true  
11 record of the testimony given by said witness;

12 That the proceeding is herein recorded  
13 fully and accurately;

14 That I am neither attorney nor counsel  
15 for, nor related to any of the parties to the  
16 action in which these depositions were taken, and  
17 further that I am not a relative of any attorney or  
18 counsel employed by the parties hereto, or  
19 financially interested in this action.

20 Dated the 9 day of December, 2022

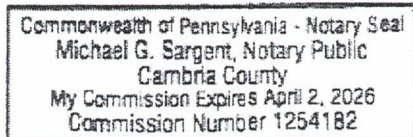
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Reporter

*Michael G. Sargent, CVR*

-----  
Michael G. Sargent  
Certified Verbatim

Relevant Time Period: April 17, 2017-October 13, 2020

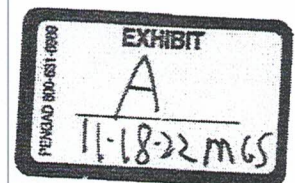
Invoices Submitted by Dively or Dirt Bottom Excavating to SVDC:

1. Attachment 1: Donation of \$1,001.00 of materials and service
2. Attachment 2: Donation of \$2,071.01 of materials and service
3. Attachment 3: Donation of \$100.00 of materials and service
4. Attachment 4: Donation of \$100.00 of materials and service
5. Attachment 5: Amount Paid \$2,300.00

Donations Total in Relevant Time Period: \$3,272.01

One Invoice Paid in Relevant Time Period: \$2,300.00

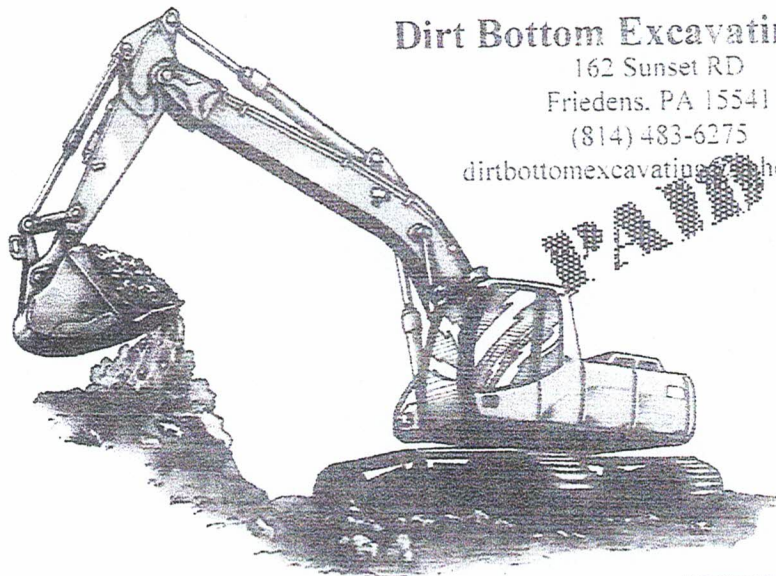
Jenkins Deposition



# Invoice

## Dirt Bottom Excavating INC.

162 Sunset RD  
 Friedens, PA 15541  
 (814) 483-6275  
 dirtbottomexcavating@yahoo.com

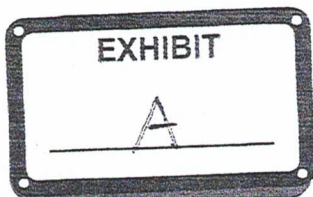


Date	Invoice #
7/30/2018	401

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville, PA. 15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
2	Mob & Demob per piece of large equipment. 85 and skid loader	100.00	200.00
2	SK 85 Excavator 18K LB. with Tilt Rotator	120.00	240.00
1	Large Track Skid Loader per. hr.	85.00	85.00
1	Large Track Skid Loader with Roller per. hr.	100.00	100.00
2	Labor per hr.	40.00	80.00
1	Utility Truck per. hr.	70.00	70.00
	repair road and berm as per Musser Engineering dam inspection report.		
	Materials 2RC modified	226.00	226.00
	Donation	-1,001.00	-1,001.00



Make checks payable to Dirt Bottom Excavating INC  
 Thank you for your business!

**Total**

\$0.00

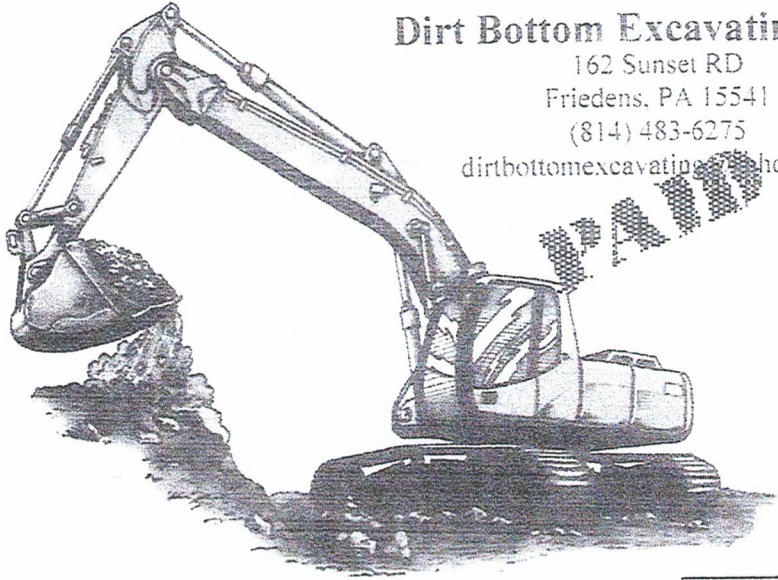
# Invoice

## Dirt Bottom Excavating INC.

162 Sunset RD  
 Friedens, PA 15541  
 (814) 483-6275

dirtbottomexcavating@yahoo.com

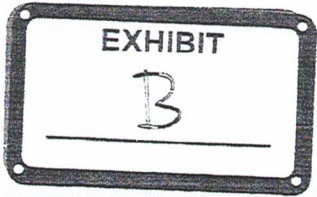
Date	Invoice #
11/6/2018	448



Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville.PA.15560

P.O. No.	Terms	Project
		Valve Box Repair

Quantity	Description	Rate	Amount
	Remove Box Off Of Valve 10/28/2018		
2	Utility Truck per. hr.	70.00	140.00
6.5	Labor per hr.	40.00	260.00
	Dismantle Box & Degrease 10/29/2018		
	Shop supplies	113.23	113.23
2	Shop Rate	80.00	160.00
1	Utility Truck per. hr. (Take Box to SMS)	70.00	70.00
	Reassemble & Reinstall Valve 10/31/2018		
3	Utility Truck per. hr.	70.00	210.00
9	Labor per hr.	40.00	360.00
2	Shop Rate	80.00	160.00
	Materials: New bolts, nuts, washers, and loctite	97.78	97.78
	Materials: SMS (New Gear)	500.00	500.00
	donation	-2.071.01	-2.071.01



Make checks payable to Dirt Bottom Excavating INC Thank you for your business!	<b>Total</b>	50.00
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# Invoice

## Dirt Bottom Excavating INC.

162 Sunset RD  
 Friedens, PA 15541  
 (814) 483-6275

dirtbottomexcavating@yahoo.com

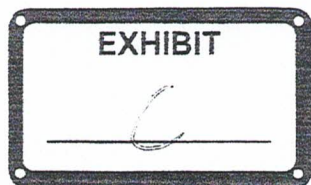


Date	Invoice #
2/21/2019	480

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville.PA.15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
1	Plowed, salt and anti-skid church parking lot for the February Meeting	100.00	100.00
1	Donation from Dirt Bottom Excavating Inc.	-100.00	-100.00



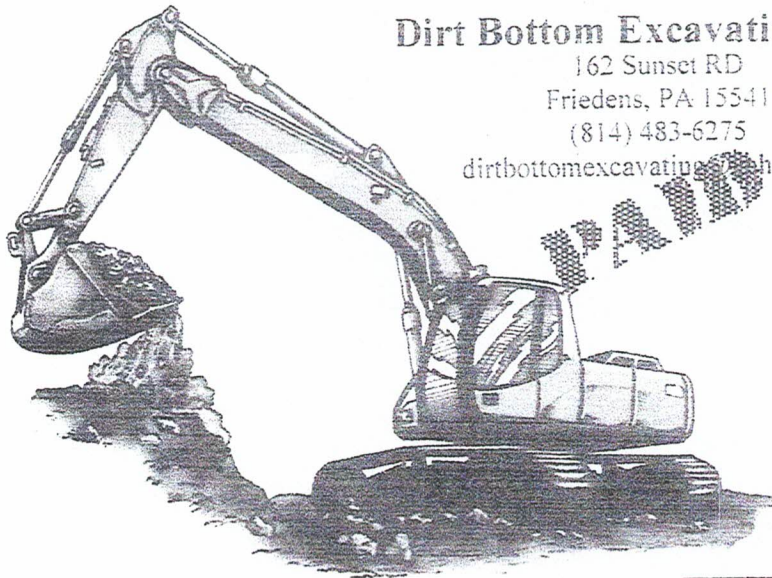
Make checks payable to Dirt Bottom Excavating INC Thank you for your business!	<b>Total</b>	\$0.00
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# Invoice

## Dirt Bottom Excavating INC.

162 Sunset RD  
Friedens, PA 15541  
(814) 483-6275

dirtbottomexcavating@yahoo.com



Date	Invoice #
12/19/2019	592

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville.PA.15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Plow, salt, and anti-skid for December 2019 Meeting	100.00	100.00
	Donation from Dirt Bottom Excavating Inc	-100.00	-100.00
<p>Make checks payable to Dirt Bottom Excavating INC Thank you for your business!</p>		<b>Total</b>	50.00



# Invoice

## Dirt Bottom Excavating INC.

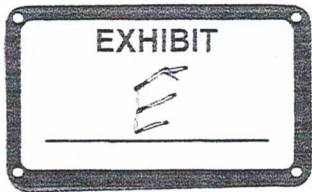
162 Sunset RD  
 Friedens, PA 15541  
 (814) 483-6275  
 dirtbottomexcavating@yahoo.com



Date	Invoice #
4/26/2017	224

Bill To
Stonycreek Vally Development Corp. P.O.Box 237 Shanksville, PA. 15560

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
	Removal of 3 stumps and 1 telephone pole	2,300.00	2,300.00
			
Make checks payable to Dirt Bottom Excavating INC Thank you for your business!		<b>Total</b>	\$2,300.00

1 A. I seen them in a meeting one night. Danny  
2 produced his donations to the lake.

3 Q. And on the front page of Group A, it  
4 specifically says, "Relevant time period April 17,  
5 2017 until October 13, 2020." Do you understand  
6 that the invoices attached herewith are invoices  
7 that Mr. Dively asserts that he provided to the  
8 board? Do you understand that?

9 A. I understand that, yes.

10 Q. And on this front page here, we have a  
11 calculation of \$3,272.01, the total donations in  
12 that time period that Mr. Dively and/or Dirt Bottom  
13 Excavating made to SVDC. Do you understand that?

14 A. Yes. I would've thought it would be a lot  
15 more than that because nobody does more work for  
16 the lake than Dirt Bottom.

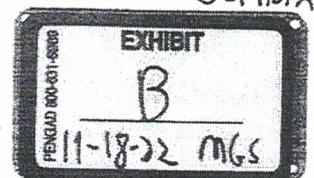
17 Q. Okay. So, let's talk about that. Do you  
18 feel that that number is actually quite low?

19 A. I think it's very low.

20 Q. But you understand that that number is only  
21 from these invoices and it would not include  
22 uninvoiced work? Do you understand that?

23 A. I understand that.

24 Q. If you were to make an estimate of how much  
25 time and materials that Mr. Dively has donated to



1 SVDC, what would that estimate be?

2 A. \$15,000 to \$20,000.

3 Q. Now, this one invoice paid in the relevant  
4 time period \$2,300, do you see that figure?

5 A. Yes, I do.

6 Q. And do you have any reason to believe that  
7 that figure is not an accurate figure as far as  
8 paid work that Mr. Dively did during that time  
9 period?

10 A. That might have covered his fuel.

11 Q. At any point while you were on the board,  
12 did you ever witness Mr. Dively steal from the  
13 corporation?

14 A. No. Donate to the corporation.

15 Q. Did you ever witness him self-dealing?

16 A. No.

17 Q. I have nothing further.

18

19

EXAMINATION

20 BY MR. CASCIO:

21 Q. I just wanted to ask a couple of questions,  
22 John. What was your motivation to acquire property  
23 in this development? What was the appeal of being  
24 a property owner there?

25 A. Part of it was the lot was given to me as

1 Dively, in October, the time you were on the board,  
2 donated - I think you used the figure \$30,000; is  
3 that correct?

4 A. That's what he submitted and we made part  
5 of the minutes at the meeting that he submitted it,  
6 yes.

7 Q. To your recollection, did Mr. Dively or  
8 Dirt Bottom Excavating ever charge either fair  
9 market value for a project or over fair market  
10 value?

11 A. No. No. I'm not in that business, but  
12 that's my opinion, yes.

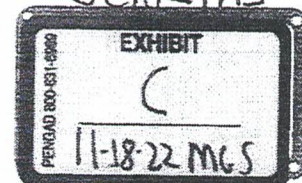
13 Q. Did Mr. Dively and Dirt Bottom Excavating,  
14 any work that they did that they charged the  
15 corporation, was it always under fair market value?

16 A. In my opinion, yes, which is why, by the  
17 way -- I know I'm not supposed to give you  
18 unsolicited information but you'll probably allow  
19 it --

20 Q. Yes.

21 A. -- which is why it's so absurd, the charges  
22 against us benefiting and Dan Dively benefiting,  
23 it's just the opposite. Exactly the opposite.

24 (D. Dively Group Exhibit A was marked  
25 for identification.)



1 Q. Now, Jim, I'm going to hand you what I've  
2 marked as D. Dively Exhibit Group A. You can go  
3 ahead and take a moment to review this document.

4 MR. CASCIO: What are we calling this?

5 MR. LEAKE: I'm calling it Group A.

6 Q. And you see that it has Exhibit A, B, C, D,  
7 and E; correct?

8 A. Yep.

9 Q. Now, this information was handed over to  
10 the Plaintiffs in discovery. Have you ever seen  
11 any of these invoices?

12 A. I don't think so. Well, I probably did  
13 because we'd normally have to approve expenditures  
14 on the board. So these probably would have been  
15 passed out. So I'm guessing I seen them. I don't  
16 think we would spend that kind of money without.

17 Q. Now, you notice on Exhibit A, though,  
18 there's a zero total. Do you notice that?

19 A. I do see it. Oh, donation, I see, yes.  
20 Okay, yep.

21 Q. So with that being said, recognizing that  
22 the majority of these are donations, do you believe  
23 you would have seen those? And if you don't know,  
24 that's fine.

25 A. I don't know, but I think I would have. I

1 don't recall seeing these specifically, but it was  
2 normal practice.

3 Q. Now, if you look at the front page, I'm  
4 going to read, "Relevant time period April 17, 2017  
5 until October 13, 2020."

6 Do you see that?

7 A. Yes.

8 Q. And specifically the invoices that are  
9 attached are calculated. Do you see that?

10 A. Yes.

11 Q. And the donations total \$2,272.01. Do you  
12 have any reason to believe that that number is not  
13 accurate as far as donations KRC Dively or Dirt  
14 Bottom Excavating made?

15 A. I have no reason, no.

16 Q. Now, one invoice paid in that relevant time  
17 period is \$2,300. Do you have any reason to  
18 dispute that that would have been the only invoice  
19 that was paid throughout that time period?

20 A. I have no reason to think that, right.

21 Q. Thank you.

22 Now, Mr. Bandstra, there was a lot of  
23 discussion about -- you stated a lot of what you're  
24 doing you're trying to do for the good of the  
25 community; correct?

1 Q. And by doing that, do you believe that you  
2 are fulfilling your fiduciary duty to the  
3 corporation as a board member?

4 A. Yes.

5 Q. Now, obviously, before that May 24, 2019  
6 vote happened, the Plaintiffs in this case brought  
7 a preliminary injunction petition against the  
8 corporation. Do you recall that?

9 A. Yes.

10 Q. And do you recall being in court on May 23,  
11 2019 which would be the day before the vote?

12 A. No. I didn't attend. I was on the road.

13 Q. But is it your understanding that the  
14 preliminary injunction was not granted?

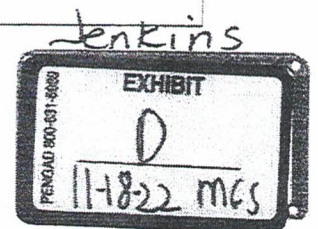
15 A. Right. I did understand that afterwards.

16 Q. And is it true that as a result of that,  
17 the vote did, in fact, take place; correct?

18 A. Yes.

19 Q. Thank you.

20 Now, moving back to Group Exhibit A, I'm  
21 going to represent to you that that is a group of  
22 documents with a cover sheet referring to the  
23 documents, specifically invoices supplied by Dirt  
24 Bottom Excavating to the corporation. So let me  
25 ask you, Larry, if you can look through these for



1 me. When you were the president of SVDC, do you  
2 recall if you saw these documents?

3 A. Yes. When Dan assembled these documents,  
4 yeah, I do recall seeing them.

5 Q. And if I can point your attention  
6 specifically to Exhibit C. Can you describe in  
7 your own words what were the services there and  
8 what is that invoice for?

9 A. So we meet at the church monthly, and for  
10 the safety of those in attendance, the lot needed  
11 to be tended to. So Dan did that prior to the  
12 meeting.

13 Q. Now, do you recall, with this specific  
14 instance of plowing that you volunteered, whether  
15 or not he brought up at a meeting before the  
16 plowing and asked whether or not he should plow?  
17 Do you recall?

18 A. No. He just did it.

19 Q. There was a lot of talk earlier in your  
20 testimony on direct with Attorney Regan about  
21 research, whether or not you had researched things  
22 and have these in-depth discussions. Do you recall  
23 that?

24 A. Yes.

25 Q. Did you feel it was necessary to research



1 or have an in-depth discussion about the parking  
2 lot being plowed for the safety of the members?

3 A. No.

4 Q. Now, I know that I had already asked you,  
5 you were familiar with these documents; correct?

6 A. Yes.

7 Q. Okay. Thank you. Now, on the front page,  
8 if I could point your attention, we have a  
9 tabulation of donations that are referred to  
10 throughout those documents as \$3,242.01. Do you  
11 see that?

12 A. Mm-hmm.

13 Q. And that number represents all of these  
14 invoices being added up. Do you understand that?

15 A. Yes.

16 Q. Do you have any reason to believe that that  
17 number is incorrect?

18 A. No.

19 Q. Then there's also one invoice that was paid  
20 for \$2,300. And we can go to the group exhibit,  
21 and it's actually named E in the group exhibit,  
22 removal of three stumps and one telephone pole. Do  
23 you see that exhibit?

24 A. Yes.

25 Q. Do you have any reason to believe that that

1 exhibit is not accurate?

2 A. No.

3 Q. Do you have any reason to believe that  
4 that's the extent of the work that Dirt Bottom was  
5 paid for during the relevant time period? And that  
6 relevant time period is on the front page. The  
7 relevant time period being April 17, 2017 to  
8 October 13, 2020.

9 A. Yes. That's correct.

10 Q. Now, aside from the donations total there,  
11 you had also testified that there's many instances  
12 of Mr. Dively volunteering where you were not given  
13 an invoice; is that correct?

14 A. Right.

15 Q. So is it fair to say that that \$3,200  
16 number is actually in reality more than likely  
17 higher? It's just we don't have invoices for all  
18 of those volunteering acts; correct?

19 A. Safe to assume, yeah.

20 Q. Now, during your testimony this morning,  
21 you had mentioned three instances where the bidding  
22 process was done where Dirt Bottom Excavating was  
23 one of the companies that submitted a bid; is that  
24 correct?

25 A. Yes.

1 Q. And just to recap, the first one, I  
2 believe, there was a bid. Was it by -- well, the  
3 first instance, who bid? It was Dirt Bottom  
4 Excavating and who else?

5 A. It was for stump removal, and it was Maust  
6 and Dirt Bottom.

7 Q. But it turns out that the stumps were never  
8 removed, or were they?

9 A. No. They were. Maust was the low bidder  
10 and got the job.

11 Q. So Maust ultimately did the work in that  
12 case?

13 A. Yes.

14 Q. Now, what about the second instance?

15 A. The second instance I recall was the Sunset  
16 project where S&S put in the bid but then, once he  
17 recognized the scope of the work, walked away from  
18 the job.

19 Q. And did Dirt Bottom Excavating put in a bid  
20 for that?

21 A. Yeah, they did.

22 Q. But it turns out that Dirt Bottom  
23 Excavating was not contracted for that job either;  
24 correct?

25 A. No.

1 Q. Now, was there not a third instance where  
2 S&S bid and Dirt Bottom bid and S&S got the job;  
3 correct?

4 A. Yes.

5 Q. So your tenure as president, you cannot  
6 recall a time where SVDC actually contracted Dirt  
7 Bottom Excavating after going through the bidding  
8 process?

9 A. Right.

10 Q. Now, there was discussion that Jim Bandstra  
11 had given authorization for Dively to do some  
12 excavating work; is that correct?

13 A. Yes.

14 Q. And you said the payment for that was  
15 approximately \$3,000?

16 A. \$4,000. I believe.

17 Q. \$4,000? Okay. And you mentioned that that  
18 was an approximate \$30,000 job; is that correct?

19 A. Yes.

20 Q. You were asked by Attorney Regan whether or  
21 not or why would Daniel or Dirt Bottom do a \$30,000  
22 job for \$4,000. Do you recall that question?

23 A. Yes.

24 Q. Is a possible explanation that was  
25 volunteer work?

1           A.    I don't know he actually physically  
2 worked on it.  I know he has addressed that he  
3 blocked it open because it was failing.  I don't  
4 know if he's ever physically did mechanical work  
5 on it, but he has participated in helping the  
6 situation.

7           Q.    Did he do that in the capacity of a  
8 public safety diver, do you recall?

9           A.    He would have been acting -- I don't know  
10 at that point.  I was going to say he was going  
11 to be acting as a board member, but he officially  
12 is a member of the dive team.  So I can't  
13 remember if that one was -- a donation was given  
14 to the dive team and he did it for that.  I do  
15 recall, as treasurer, that we gave a donation to  
16 the dive team.

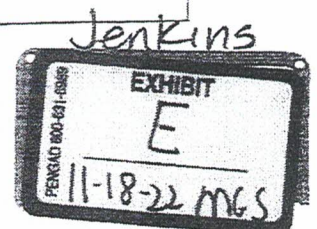
17          Q.    Understood.

18          A.    So I assume that would be the same time  
19 period.

20          Q.    Okay.  So we're already clear this \$3200  
21 figure is actually very low, obviously, correct?

22          A.    Yes.

23          Q.    Now, moving on, we have on Group Exhibit  
24 A, one invoice paid in the relevant time period,  
25 and again we're talking about the April 17, 2017



1 until October 11, 2019 time period.

2 Is there any reason for you to believe,  
3 as the treasurer, that that figure is inaccurate?

4 A. No. I do remember seeing that number in  
5 QuickBooks.

6 Q. Now, did you ever witness Mr. Dively  
7 steal money from SVDC?

8 A. No.

9 Q. Doing the math here, and even on what's  
10 been provided, would you agree that Mr. Dively  
11 has donated more time and materials which would  
12 exceed any money he was ever paid for work that  
13 he actually charged for? Would you agree with  
14 that?

15 A. I would have to review what he was paid  
16 for. I apologize.

17 When I was treasurer, I had access to  
18 QuickBooks. I don't remember all those things,  
19 what he officially was paid for, what he wasn't.

20 Q. Okay. Now, you also mentioned that  
21 during your time on the board, Mr. Dively never  
22 voted on any matter in which he would have been  
23 doing the work; is that correct? You said he'd  
24 abstain from any vote, correct?

25 A. I don't believe all the time he did.

1 Sometimes he would abstain, but I don't know for  
2 sure that he abstained every time.

3 Q. Okay.

4 A. As far as people -- I'm sorry. The way  
5 you said that, I missed it. So as far as the  
6 work, yes, he abstained all the time.

7 His customers getting building permits  
8 approval, I don't know that he abstained all the  
9 time for that.

10 Physical work, yes, he always abstained.

11 Q. Okay. Thank you.

12 Again, if you can recall, do you recall  
13 Mr. Dively or Dirt Bottom Excavation ever doing a  
14 job for SVDC that you felt was not for fair  
15 market value, meaning, it was for more than fair  
16 market value?

17 A. No.

18 Q. You had mentioned earlier that a -- you  
19 had initiated a motion to get a boat motor that  
20 ended up costing between \$9- to \$10,000, correct?

21 A. Right.

22 Q. At that point when you did that motion,  
23 do you feel that was a breach of your fiduciary  
24 duties to the corporation?

25 A. I do not.